

**UNITED STATES NAVY-MARINE CORPS
COURT OF CRIMINAL APPEALS
WASHINGTON, D.C.**

**Before
R.E. VINCENT, J.E. STOLASZ, B.G. FILBERT
Appellate Military Judges**

**JOSEPH M. JACKSON
CORPORAL (E-4), U.S. MARINE CORPS**

v.

UNITED STATES OF AMERICA

**NMCCA 200900365
Review of Petition for Extraordinary Relief in the Nature of a
Writ of Error *Coram Nobis***

Sentence Adjudged: 18 September 1978.

Convening Authority: Commanding Officer, 1st Marine
Brigade, Fleet Marine Force, San Francisco, CA.

For Petitioner: *Pro se*.

28 July 2009

OPINION OF THE COURT

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.

STOLASZ, Judge:

On 24 July 2009, the petitioner submitted a petition for Extraordinary Relief in the Nature of a Writ of Error *Coram Nobis* under the All Writs Act, 28 U.S.C. § 1651(a). In his petition, he alleges contradictory claims: first, that he was tried without being afforded an attorney, and second, that counsel was inadequate because he failed to realize the possible defense of insanity. He further asserts the military lacked jurisdiction to try him at a special court-martial held on 18 September 1978 because he was denied the assistance of legal counsel, and not offered the opportunity to present a potential defense of insanity. The petitioner requests this court to set aside and dismiss the findings and sentence imposed by the 18

September 1978 court-martial, and to have counsel appointed for him to address the possible defense of insanity.

After considering the petition, we conclude he has failed to demonstrate a clear and indisputable right to the extraordinary relief requested. We, therefore, deny the petition.

I. Procedural History

Pursuant to his pleas, the petitioner was convicted by a special court-martial on 18 September 1978. On 27 September 1978, the petitioner was referred for a routine psychiatric evaluation, as part of the discharge procedure. Appellant's Petition at Exhibit C. Thereafter, the Navy and Marine Corps Court of Military Review affirmed the findings and sentence in May 1979.

II. Jurisdiction

The All Writs Act, 28 U.S.C. § 1651, authorizes this court to grant extraordinary relief in appropriate cases. The Act, however, does not enlarge the court's jurisdiction, and the court may only grant extraordinary relief "in aid of 'its existing statutory jurisdiction.'" *Denedo v. United States*, 66 M.J. 114, 120 (C.A.A.F. 2008)(quoting *Clinton v. Goldsmith*, 526 U.S. 529, 534-35 (1999)), *aff'd*, 129 S. Ct. 2213, 2009 U.S. LEXIS 4160 (U.S. 2009). Once a case becomes final in accordance with Articles 71 and 76, Uniform Code of Military Justice, a military appellate court may issue a writ if a petitioner seeks to collaterally attack an action that was taken within the subject matter jurisdiction of the military justice system, such as the finding or sentence of a court-martial. *Id.* at 125; *Loving v. United States*, 62 M.J. 235, 245-46 (C.A.A.F. 2005).

The first question, therefore, is whether the requested writ would be "in aid of" the court's jurisdiction given that the petitioner's court-martial is final under both Articles 71 and 76, UCMJ. We note the petitioner seeks a writ to examine the findings and sentence of a final court-martial that this court has previously affirmed and raises a claim that he was suffering from a mental disease or defect that goes to the validity of the judgment rendered and affirmed. Accordingly, based on our superior court's decision in *Denedo*, we possess jurisdiction to entertain the petition for extraordinary relief in this case.

III. Merits of the Petition

A. Principles of Law

An extraordinary writ is a drastic remedy that should only be used in extraordinary circumstances. *Aviz v. Carver*, 36 M.J. 1026, 1028 (N.M.C.M.R. 1993). The petitioner has the burden to show a clear and indisputable right to the extraordinary relief requested. *Denedo*, 66 M.J. at 126 (citing *Cheney v. United States Dist. Court*, 542 U.S. 367, 381 (2004)).

A writ of error *coram nobis* is extraordinary relief available only under "exceptional circumstances" based upon facts that were not apparent to the court during the original consideration of the case and that may change the result. *United States v. Frischholz*, 36 C.M.R. 306, 309 (C.M.A. 1966)(citing *United States v. Tavares*, 27 C.M.R. 356, 358 (C.M.A. 1959)). The standard for obtaining a writ of error *coram nobis* is more stringent than the standard applicable on direct appeal. *Dew v. United States*, 48 M.J. 639, 649 (Army Ct.Crim.App. 1998)(quoting *Chapel v. United States*, 21 M.J. 687, 689 (A.C.M.R. 1985)). The error the petitioner alleges must be "of the most fundamental character, that is, such as rendered the proceeding itself irregular and invalid". *Morgan*, 346 U.S. at 509 (quoting *United States v. Mayer*, 235 U.S. 55, 69 (1914)).

Prior to addressing the merits of the petition, the petitioner must meet six stringent threshold requirements:

- (1) the alleged error is of the most fundamental character;
- (2) no remedy other than *coram nobis* is available to rectify the consequences of the error;
- (3) valid reasons must exist for not seeking relief earlier;
- (4) the new information presented in the petition could not have been discovered through the exercise of reasonable diligence prior to the original judgment;
- (5) the petition does not seek to reevaluate previously considered evidence or legal issues; and,
- (6) the sentence has been served, but the consequences of the erroneous conviction persist.

Denedo, 66 M.J. at 126-27 (citations omitted).

B. Analysis

Since the alleged error is jurisdictional, it is of a most fundamental character, and, arguably, our consideration of *coram nobis* may be his only adequate remedy. However, the petitioner has not articulated any valid reasons for failing to seek the requested relief earlier. He could have asserted his claim that he was suffering from a mental disease or defect at the time he committed the offenses, during his court-martial or during the appellate review process. Appellant's Affidavit at ¶ 3. Clearly, the petitioner's alleged jurisdictional defect is based upon information that could and should have been discovered through the exercise of reasonable diligence prior to the original judgment or on appeal. He further failed to raise the defense on appeal, even though he concedes he was informed of his right to be represented by appellate defense counsel, and to appeal any decision of this court to the United States Court of Military Appeals. *Id.* at ¶ 5. Accordingly, we conclude the petitioner has failed to meet the threshold requirements.

Furthermore, even if the petitioner was able to meet the *coram nobis* threshold requirements, he would not be entitled to relief. The petitioner has not provided evidence to support his claims other than an illegible copy of his purported psychiatric consultation.

IV. Conclusion

For the foregoing reasons, the petitioner has failed to demonstrate a clear and indisputable right to the extraordinary relief he has requested. Accordingly, the petition is denied.

Senior Judge VINCENT and Judge FILBERT concur.

For the Court

R.H. TROIDL
Clerk of Court