UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
WALKER, EWING, and PARKER
Appellate Military Judges

UNITED STATES, Appellee
v.
Private First Class JEROME J. FORREST
United States Army, Appellant

ARMY 20200715

ORDER

WHEREAS:

On 20 January 2022, appellant filed his brief to this Court alleging his trial defense counsel were ineffective in their representation of him by failing: (1) to investigate and obtain necessary expert assistance; and (2) present evidence in mitigation and extenuation during his presentencing proceedings. Appellant asserts his defense counsel were ineffective "when they failed to take sufficient steps to investigate appellant's head injury and provide a sufficient factual basis to request or compel an expert witness in the area of Neuropsychology." Appellant also asserts his defense counsel were ineffective "by failing to adequately prepare appellant's pre-sentencing case." Specifically, appellant argues his counsel "presented no evidence of appellant's service" and "failed to offer military records, information about appellant's service, or members of his unit" that "would have been strong evidence of his rehabilitative potential."

NOW THEREFORE, IT IS ORDERED:

1. Appellate government counsel shall obtain affidavits from Captain Mark Jensen, Captain Lawrence Willard, and Major Daniel Hill addressing appellant's allegations of ineffective assistance of counsel. At minimum, such affidavits should address:

a. What, if any, steps did appellant's defense team take to investigate appellant's head injury that occurred one week before the charged offense of murder?

b. What, if any, were the legal or strategic reasons for not presenting testimony from Dr. JG, the requested defense expert in neuropsychology, in support of the Defense Motion to Compel Expert Consultants?

c. What, if any, were the legal or strategic reasons for declining the government's offer to have appellant undergo additional TBI screening? *See* App. Ex. XV.

d. What, if any, were the legal or strategic reasons for not presenting evidence to the military judge that appellant may have suffered a TBI?

e. How did defense counsel investigate and prepare for presentencing proceedings? What family members or friends did defense counsel interview prior to trial? What steps did defense counsel take to prepare the witnesses that testified for presentencing? *See* Def. App. Exs. C, D, E.

f. Did defense counsel know the names of other family members, friends, or military members that had served with appellant who they could have called as witnesses prior to trial? Specially, did defense counsel interview Staff Sergeant AB, Mr. AJ, Sergeant JR, Technical Sergeant AI, Ms. AI, or Ms. NK? *See* Def. App. Ex. F, G, H, I, J, and K. If not, why? If defense counsel interviewed any of the above referenced individuals, why were they not called as presentencing witnesses?

g. What, if any, were the legal or strategic reasons for not presenting evidence of appellant's military service during presentencing?

2. Captain Mark Jensen, Captain Lawrence Willard, and Major Daniel Hill shall attach any documents relevant to support their affidavits not otherwise found in the record of trial. *See* Army Reg. 27-26, Rules of Professional Conduct for Lawyers, App. B, Rule 1.6(b)(2) (28 June 2018).

3. Appellate government counsel shall obtain from Captain Mark Jensen, Captain Lawrence Willard, and Major Daniel Hill such affidavits, along with any other documents provided, and file them with this Court no later than 18 July 2022.

4. The government may provide Captain Mark Jensen, Captain Lawrence Willard, and Major Daniel Hill any portion of the record that may assist them in their response, but may not provide them any sealed portion of the record absent further order of this court.

DATE: 27 June 2022

FOR THE COURT:

[redacted]

JAMES W. HERRING, JR.
Clerk of Court

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CF: JALS-DA
JALS-GA
JALS-CCR
JALS-CCZ
JALS-CR4