

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before the Court Sitting *En Banc*

UNITED STATES, Appellee
v.
Private First Class GLEN R. SPITZ
United States Army, Appellant

ARMY 20220195

ORDER

WHEREAS:

On 27 October 2022, appellant filed his brief with one assignment of error. In the same brief, appellant requested this court consider an additional matter pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982). On 16 November 2022, appellee filed its brief in answer.

NOW THEREFORE, IT IS ORDERED:

On its own motion, this Court specifies the following issues:

I.

HOW, IF AT ALL, DO THE PRINCIPLES OF STATUTORY INTERPRETATION AND JUDICIAL NOTICE GOVERN WHAT INFORMATION THIS COURT MAY CONSIDER, AND HOW MUCH WEIGHT WE GIVE IT, IN DETERMINING WHETHER THE RECORDS MAINTAINED IN MILITARY JUSTICE ONLINE ARE ADMISSIBLE AT SENTENCING UNDER R.C.M. 1001(b)(2)?

II.

IS MILITARY JUSTICE ONLINE IDENTIFIED AS A SYSTEM OF RECORD KEEPING IN THE ARMY RECORDS INFORMATION MANAGEMENT SYSTEM? IN WHAT WAY, IF ANY, DOES THE IDENTIFICATION OR LACK OF IDENTIFICATION OF MILITARY JUSTICE ONLINE AS A SYSTEM OF RECORD KEEPING IMPACT THIS COURT'S LEGAL DETERMINATION WHETHER NONJUDICIAL

PUNISHMENT RECORDS CAN THEREBY BE PROPERLY “MAINTAINED” IN ACCORDANCE WITH ARMY REGULATION 27-10 IN MILITARY JUSTICE ONLINE FOR PURPOSES OF ADMISSION UNDER R.C.M. 1001?

III.

IS MILITARY JUSTICE ONLINE LISTED AS A LOCATION OF MILITARY JUSTICE FILES IN THE SYSTEM OF RECORDS NOTIFICATION (SORN) UNDER THE REQUIREMENTS OF THE PRIVACY ACT? IF MILITARY JUSTICE ONLINE IS NOT LISTED AS A LOCATION FOR MILITARY JUSTICE FILES, WHAT IMPACT, IF ANY, DOES THAT HAVE ON THIS COURT’S LEGAL DETERMINATION WHETHER NONJUDICIAL PUNISHMENT RECORDS CAN THEREBY BE PROPERLY “MAINTAINED” IN ACCORDANCE WITH ARMY REGULATION 27-10 IN MILITARY JUSTICE ONLINE FOR PURPOSES OF ADMISSION UNDER R.C.M. 1001?

IV.

WHAT, IF ANY, IS THE LEGAL SIGNIFICANCE OF ARMY REGULATION 27-10, PARA. 3-44(b) AND 5-37(a) STATING THAT A RECORD OF NONJUDICIAL PUNISHMENT MAY BE ADMITTED AT COURTS-MARTIAL FROM ANY FILE IN WHICH IT IS PROPERLY “MAINTAINED” BY REGULATION WHILE PARAGRAPH 14-1(a) IDENTIFIES MILITARY JUSTICE ONLINE AS A TOOL FOR “MANAGING” VARIOUS ADVERSE ADMINISTRATIVE DOCUMENTS, INCLUDING NONJUDICIAL PUNISHMENT? AND WHAT SIGNIFICANCE, IF ANY, SHOULD WE PLACE ON THE FACT THAT PARAGRAPH 5-37 IS TITLED SENTENCING?

V.

WHAT IMPACT, IF ANY, DOES ARMY REGULATION 27-10, PARA. 3-37(h) REQUIRING A UNIT PARALEGAL TO “MAINTAIN” A COPY OF NONJUDICIAL PUNISHMENT IN MILITARY JUSTICE

ONLINE FOR A PERIOD OF TWO YEARS HAVE ON THIS COURT'S LEGAL DETERMINATION WHETHER RECORDS PULLED FROM MILITARY JUSTICE ONLINE ARE RECORDS THAT HAVE BEEN "MAINTAINED" IN ACCORDANCE WITH REGULATION FOR PURPOSES OF ADMISSION UNDER R.C.M. 1001? HOW DOES THE LANGUAGE OF ARMY REGULATION 27-10, PARA. 3-37(h), IF AT ALL, COMPORT WITH THE LANGUAGE IN PARAGRAPH 14-1(a) IDENTIFYING MILITARY JUSTICE ONLINE AS A TOOL FOR "MANAGING" VARIOUS ADVERSE ADMINISTRATIVE DOCUMENTS, INCLUDING NONJUDICIAL PUNISHMENT?

VI.

DOES THE FACT THAT ARMY REGULATION 27-10 STATES THAT MILITARY JUSTICE ONLINE IS A TOOL FOR "MANAGING" ADVERSE ADMINISTRATIVE INFORMATION IMPACT THIS COURT'S LEGAL DETERMINATION WHETHER RECORDS PULLED FROM MILITARY JUSTICE ONLINE ARE RECORDS THAT HAVE BEEN "MAINTAINED" IN ACCORDANCE WITH REGULATION FOR PURPOSES OF ADMISSION UNDER R.C.M. 1001?

Appellant shall file a brief on the specified issues no later than fourteen (14) days from the date of this order. Appellee shall file a responsive brief no later than fourteen (14) days after the date of appellant's brief. Appellant may file a reply brief no later than seven (7) days after appellee's brief.

DATE: 20 March 2023

FOR THE COURT:



✓ JAMES W. HERRING, JR.
Clerk of Court