

# UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before  
FLEMING, HAYES, and PARKER  
Appellate Military Judges

UNITED STATES, Appellee  
v.  
Sergeant First Class BRIAN J. DIVINE  
United States Army, Appellant

ARMY 20220427

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ORDER  
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WHEREAS:

On 7 September 2023, appellant filed his brief. In matters personally raised by appellant, appellant alleges his trial defense counsel, Mr. Wade Faulkner and Captain (CPT) Jeremy Lewis, were ineffective in their representation of appellant.

NOW THEREFORE, IT IS ORDERED:

1. Appellate government counsel shall obtain affidavits from Mr. Faulkner and CPT Lewis, addressing appellant's allegations of ineffective assistance of counsel. At a minimum, such affidavits should address:
  - a. Why did defense counsel withdraw the defense motion regarding unreasonable multiplication of charges and multiplicity?
  - b. Whether counsel coerced or attempted to coerce appellant into pleading guilty?
  - c. Whether defense counsel threatened to refuse to allow appellant to testify in his own defense?
  - d. Did defense counsel explain to appellant that the decision whether to testify was appellant's choice?
  - e. Did defense counsel exaggerate the likely outcome of a contested trial by court-martial or the likely punishment when speaking to appellant?
  - f. What did defense counsel explain to appellant regarding the consequences of a bad-conduct discharge?

- g. Did defense counsel state or imply that counsel would or could not diligently represent appellant at a contested court-martial?
- h. Did defense counsel state or imply that appellant could not make a counter-offer or make changes to the plea agreement or stipulation of fact?

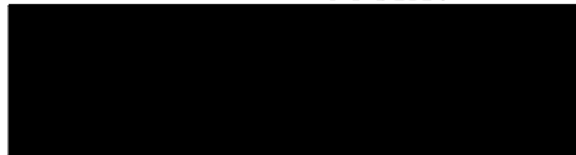
2. Captain Lewis and Mr. Faulkner shall attach any documents relevant to support their affidavits not otherwise found in the record of trial. *See* Army Reg. 27-26, Rules of Professional Conduct for Lawyers, App. B, Rule 1.6(b)(2) (28 June 2018).

3. Government appellate counsel shall obtain from Mr. Faulkner and CPT Lewis such affidavits, along with any other documents provided, and file them with this Court no later than 14 days from the date of this order.

4. The government may provide Mr. Faulkner and CPT Lewis any portion of the record of trial that may assist them in their response, but the government may not provide them any sealed portions of the record absent further order of this court.

DATE: 24 April 2024

FOR THE COURT:



STEVEN P. HAIGHT  
Acting Clerk of Court

CF: JALS-DA  
JALS-GA  
JALS-CCR  
JALS-CR2