

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
PENLAND, MORRIS, and ARGUELLES
Appellate Military Judges

UNITED STATES, Appellee
v.
Sergeant MICHAEL V. SMITH
United States Army, Appellant

ARMY 20230029

ORDER

WHEREAS:

A military judge sitting as a general court-martial convicted appellant, contrary to his pleas, of one specification of sexual assault, one specification of abusive sexual contact, one specification of assault consummated by battery, and one specification of extramarital sexual conduct (adultery) in violation of Articles 120, 128, and 134, Uniform Code of Military Justice [UCMJ], 10 U.S.C. §§ 920, 928, 934. Appellant was acquitted of one specification of abusive sexual contact. The military judge sentenced appellant to confinement for forty months and fifteen days, reduction to the grade of E-1, and a dishonorable discharge. The convening authority took no action on the findings and sentence. This case is now before us for review under Article 66, UCMJ.

On 2 July 2024, appellant filed a reply brief on a specified issue before this court suggesting that his defense counsel were ineffective because they: (1) failed to make a motion for a not guilty finding on the adultery charge under Rule for Courts-Martial [R.C.M.] 917, after the government failed to put on any evidence in its case-in-chief that appellant was married; and (2) after failing to make such a motion, elicited evidence from appellant when he testified during the defense case that he was married.

NOW, THEREFORE, IT IS ORDERED:

1. Appellate government counsel shall obtain separate affidavits from Mr. Mickey Williams and Captain (CPT) Douglas Partridge which address appellant's allegations of ineffective assistance of counsel. At minimum, the affidavits shall address the following questions:

- a. Why did you not make a motion under R.C.M. 917 to dismiss the adultery charge after the government rested in its case-in-chief?

- b. Why did you elicit evidence from appellant that he was married in the defense case when the government failed to put on any such evidence in its case-in-chief?

2. Mr. Williams and CPT Partridge 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)(ii)] (28 June 2018).

3. Government appellate counsel shall obtain from Mr. Williams and CPT Partridge 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. Williams and CPT Partridge 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: 15 August 2024

FOR THE COURT:



JAMES W. HERRING, JR. *JW*
Clerk of Court