

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
POND, MORRIS, and PARKER
Appellate Military Judges

Major RONALD E. ALLEY,
Petitioner
v.
UNITED STATES
Respondent

ARMY MISC 20240411

ORDER

WHEREAS:

On 29 August 2024, petitioner filed a Petition for Extraordinary Relief with this court requesting review of his court-martial and issuance of a writ of error *coram nobis* under the All Writs Act, 28 U.S.C. § 1651(a), providing, among other things, reversal of his guilty findings from his court-martial from almost 70 years prior. Petitioner was tried in 1955 by a general court-martial convened at Fort Meade, Maryland and convicted of several offenses while in the hands of the enemy as a prisoner of war in North Korea in the early 1950s. Petitioner was convicted of one offense of communicating with the enemy, in violation of Article of War 81; four offenses of communicating with the enemy, in violation of Article of War 96; four offenses of communicating with the enemy, in violation of Article 104, Uniform Code of Military Justice (UCMJ), 10 USC § 904; and one offense of communicating with the enemy, in violation of Article 134, UCMJ, 10 USC § 934. Petitioner was sentenced to a dishonorable discharge, forfeiture of all pay and allowances, and confinement at hard labor for ten years. The convening authority disapproved the finding of guilty of the Article of War 81 offense, approved the remaining findings, and approved only so much of the sentence as provided for dismissal from the service, forfeiture of all pay and allowances, and confinement at hard labor for ten years.¹

A board of review affirmed the findings and the sentence. On further appeal, the Court of Military Appeals concluded, after careful consideration of the case, that “no substantial question of law was presented” by Petitioner’s seven assignments of error raised in his initial brief and declined to review them. The Court, however, granted review of Petitioner’s supplemental error – whether the convening authority

¹ Petitioner states his sentence was later reduced to five years by the Assistant Secretary of the Army on 14 August 1958.

could legally approve a dismissal in lieu of the dishonorable discharge imposed – and after concluding the convening authority could legally do so, affirmed the decision of the board of review. *United States v. Alley*, 8 U.S.C.M.A. 559, 25 C.M.R. 63, 64 (1958).

Petitioner now requests, in his Petition for Extraordinary Relief, that this court find actual and/or apparent unlawful command influence as alleged in five separate assignments of error and provide the following relief: reversal of the guilty findings, restoration of all pay and benefits for his estate, and posthumous promotion to the rank of Colonel.

The All Writs Act grants “all courts established by Act of Congress” the power to “issue all writs necessary or appropriate in aid of their respective jurisdictions.” 28 U.S.C. § 1651(a). Accordingly, to issue a writ under the Act, a service court of criminal appeals must make two determinations: (1) the writ is in aid of its jurisdiction and (2) issuance of the writ is necessary and appropriate. *United States v. Brown*, 81 M.J. 1, 3 (C.A.A.F. 2021) (citing *Denedo v. United States*, 66 M.J. 114, 119 (C.A.A.F. 2008)). “The All Writs Act is not an independent grant of jurisdiction, nor does it expand a court’s existing statutory jurisdiction.” *United States v. Howell*, 75 M.J. 386, 390 (C.A.A.F. 2016) (citing *Clinton v. Goldsmith*, 526 U.S. 529, 534 (1999)). Because the service “courts of criminal appeals are courts of limited jurisdiction, defined entirely by statute,” *United States v. Arness*, 74 M.J. 441, 442 (C.A.A.F. 2015), our “jurisdiction under the All Writs Act is limited to those matters that are ‘in aid of [the Court of Criminal Appeals] respective jurisdiction’” under our statutory authority under the Uniform Code of Military Justice. *Howell*, 75 M.J. 390.

Article 66, UCMJ, provides this “court may act only with respect to the findings and sentence as entered into the record” and “may affirm only such findings of guilty as the Court finds correct in law, and in fact” in accordance with its factual sufficiency review. Article 66(d)(1)(A); 10 U.S.C. § 866(d)(1)(A). Thus, the jurisdiction of this court under the All Writs Act is limited to matters that “have the potential to directly affect the findings and sentence.” *Howell*, 75 M.J. at 390. Petitioner has raised a claim of unlawful command influence which by its nature challenges the validity of a court-martial conviction. *See e.g., United States v. Biagase*, 50 M.J. 143 (C.A.A.F. 1999) (stating once raised, the government must prove beyond a reasonable doubt that there was no unlawful command influence or that the unlawful command influence did not affect the findings and sentence). Unlawful command influence is prohibited now and was prohibited at the time of appellant’s court-martial in 1955. *Compare* 10 U.S.C. § 837 (“No person subject to this chapter may attempt to coerce or, by any unauthorized means, attempt to influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case”) *with* Manual for Courts-Martial, para. 38 (1951) (“No person subject to the code shall attempt to coerce or

by any unauthorized means influence the action of a court-martial or any other military tribunal, or any member thereof, in reaching the findings or sentence in any case.”). Thus, it would appear that the relief requested is within the existing jurisdiction of this Court.²

But even assuming we have jurisdiction, there are limitations on the issuance of a writ of *coram nobis*. The Supreme Court confined “the use of *coram nobis* so that finality is not at risk in a great number of cases” by carefully limiting “the availability of the writ to ‘extraordinary’ cases presenting circumstances compelling its use ‘to achieve justice.’” *United States v. Denedo*, 556 U.S. 904, 910 (2009) (citation omitted). Additionally, Article 76, UCMJ – providing for the finality of court-martial proceedings, findings, and sentence – while “not a jurisdictional limitation,” serves as a “prudential constraint on collateral review.” *Denedo*, 66 M.J. at 120. Thus, “the res judicata effect of Article 76 means the decision on direct review will stand as final unless it fails to pass muster under the highly constrained standards applicable to review of final judgments.” *Id.* at 121.

“Although a petition may be filed at any time without limitation, a petitioner must meet 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 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 writ 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.

Assuming this court has jurisdiction to consider this petition and assuming standing and appropriate authority to file this petition, we find petitioner has failed to meet his burden in meeting the stringent requirements threshold.

NOW, THEREFORE, IT IS ORDERED:

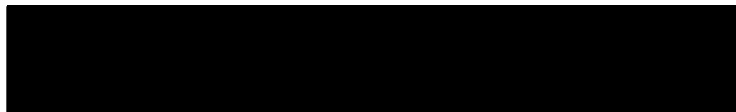
Petitioner’s request for extraordinary relief in the form of a writ of *coram nobis* is DENIED.

² We acknowledge that this Court’s jurisdiction would not extend to all the relief requested by Petitioner.

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DATE: 6 February 2025

FOR THE COURT:



JAMES W. HERRING, JR.
Clerk of Court

CF: JALS-DA
JALS-GA
JALS-CCR
Respondent

JALS-CR4
JALS-TJ
Petitioner