

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
FLOR, POND, and STEELE
Appellate Military Judges

UNITED STATES, Appellee
v.
Specialist JAROD A. KUYKENDALL
United States Army, Appellant

ARMY 20230238

ORDER

WHEREAS:

A panel of officer and enlisted members sitting as a general court-martial convicted appellant, contrary to his pleas, of two specifications of sexual assault without consent, in violation of Article 120, Uniform Code of Military Justice, 10 U.S.C. § 920 [UCMJ]. The military judge sentenced appellant to a dishonorable discharge, four years confinement, and reduction to the grade of E-1. Appellant's case is now pending review before this court pursuant to Article 66, UCMJ.

Before this court, appellant alleges he received ineffective assistance of counsel during his trial proceedings when his defense counsel failed to adequately prepare and present a pre-sentencing case.

In reviewing the record and appellant's allegations of ineffectiveness, we conclude affidavits from appellant's trial defense counsel are required to address appellant's allegations.

NOW, THEREFORE, IT IS ORDERED:

1. Appellate government counsel shall obtain an affidavit from Captain Patrick R. McCormick and Captain John T. Overocker addressing appellant's allegations of ineffective assistance of counsel during appellant's case. At a minimum, Captain McCormick and Captain Overocker shall provide responses to the following:

- a. What steps did you take to investigate and present matters in extenuation and mitigation during appellant's presentencing proceedings?
- b. Did appellant provide you a list of potential presentencing witnesses? If so, what steps did you take to interview these witnesses? What steps

did you take to investigate and interview other potential sentencing witnesses?

- c. Why did you decide to not present any witnesses or additional evidence during appellant's presentencing proceedings beyond appellant's unsworn statement and Army Commendation Medal award? Why did you not call SFC [REDACTED], or appellant's father, wife, and grandmother who were present in the gallery during the presentencing proceedings?
- d. Given United States v. Wheeler, 38 C.M.R. 72 (1967), what independent investigation did you conduct into the characteristics of appellant, to include his education, upbringing, and good military character?
- e. In addition to answering the questions above, please discuss any additional investigation, preparation, and analysis that informed your presentation of a pre-sentencing case.

2. Captain McCormick and Captain Overocker shall attach any documents relevant to these questions not otherwise found in the record of trial.

3. Appellate government counsel shall obtain from Captain McCormick and Captain Overocker the foregoing affidavits, along with any other documents provided, and file them with this court by no later than 14 days from the date of this order.

4. The government may provide Captain McCormick and Captain Overocker any portion of the record that may assist them with their respective responses.

DATE: 11 August 2025

FOR THE COURT:

[REDACTED]
JAMES W. HERRING
Clerk of Court

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