UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
WILLIAMS, COOPER, and SCHLACK
Appellate Military Judges

UNITED STATES, Appellee
v.
Master Sergeant RAFAEL AYUSO
United States Army, Appellant

ARMY 20240332

ORDER

WHEREAS:

A military judge sitting as a general court-martial convicted appellant, contrary to his pleas, of one specification of simple assault with an unloaded firearm, one specification of solicitation to distribute a controlled substance, and two specifications of extramarital sexual conduct in violation of Articles 128, 82, and 134 of the Uniform Code of Military Justice, 10 U.S.C. § 928, 882, and 934 [UCMJ]. The military judge sentenced appellant to a reduction to the grade of E-5. 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 collect or present exculpatory evidence.

In reviewing the record, appellant's allegations of ineffectiveness, and the government's motion to compel, 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 David Cuervo and Mr. Matthew Cardellino addressing appellant's allegations of ineffective assistance of counsel during appellant's case. At a minimum, Captain Cuervo and Mr. Cardellino shall provide responses to the following:

    a. What steps did you take to obtain and review communications between appellant and his wife?

b. Did appellant provide you with text messages, sent by his wife, that had a tendency to prove that the conduct of Charge I occurred outside the statute of limitations? If so, when did appellant provide you these text messages?

c. Did you consider potential statute of limitations issues in regard to the Specification of Charge I?

d. Please discuss any additional investigation, preparation, and analysis that informed your trial strategy.

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

3. Appellate government counsel shall obtain from Captain Cuervo and Mr. Cardellino the foregoing affidavits, along with any other documents provided, and file them with this court by no later than 5 December 2025.

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

DATE: 5 November 2025

FOR THE COURT:

[redacted]

JAMES W. HERRING, JR.
Clerk of Court

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