UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before the Court Sitting En Banc

UNITED STATES, Appellee
v.
Private First Class GLEN R. SPITZ
United States Army, Appellant

ARMY 20220195

Steven C. Henricks, Military Judge

NOTICE OF HEARING

TO: Appellate Defense Counsel: Captain Justin L. Watkins
Major Rachel P. Gordienko

Appellate Government Counsel: Captain Lisa Limb
Lieutenant Colonel Pamela L. Jones

Notice is hereby given that a hearing in this case before the United States Army Court of Criminal Appeals, Panel 1, has been set for 6 July 2023 at 1330. Argument will be heard on the following issues:

I.

HOW, IF AT ALL, DO THE PRINCIPLES OF STATUTORY INTERPRETATION AND JUDICIAL NOTICE GOVERN WHAT INFORMATION THIS COURT MAY CONSIDER, AND HOW MUCH WEIGHT WE GIVE IT, IN DETERMINING WHETHER THE RECORDS MAINTAINED IN MILITARY JUSTICE ONLINE ARE ADMISSIBLE AT SENTENCING UNDER R.C.M. 1001(b)(2)?

II.

IS MILITARY JUSTICE ONLINE IDENTIFIED AS A SYSTEM OF RECORD KEEPING IN THE ARMY RECORDS INFORMATION MANAGEMENT SYSTEM? IN WHAT WAY, IF ANY, DOES THE IDENTIFICATION OR LACK OF IDENTIFICATION OF MILITARY JUSTICE ONLINE AS A SYSTEM OF RECORD

KEEPING IMPACT THIS COURT'S LEGAL DETERMINATION WHETHER NONJUDICIAL PUNISHMENT RECORDS CAN THEREBY BE PROPERLY "MAINTAINED" IN ACCORDANCE WITH ARMY REGULATION 27-10 IN MILITARY JUSTICE ONLINE FOR PURPOSES OF ADMISSION UNDER R.C.M. 1001?

III.

IS MILITARY JUSTICE ONLINE LISTED AS A LOCATION OF MILITARY JUSTICE FILES IN THE SYSTEM OF RECORDS NOTIFICATION (SORN) UNDER THE REQUIREMENTS OF THE PRIVACY ACT? IF MILITARY JUSTICE ONLINE IS NOT LISTED AS A LOCATION FOR MILITARY JUSTICE FILES, WHAT IMPACT, IF ANY, DOES THAT HAVE ON THIS COURT'S LEGAL DETERMINATION WHETHER NONJUDICIAL PUNISHMENT RECORDS CAN THEREBY BE PROPERLY "MAINTAINED" IN ACCORDANCE WITH ARMY REGULATION 27-10 IN MILITARY JUSTICE ONLINE FOR PURPOSES OF ADMISSION UNDER R.C.M. 1001?

IV.

WHAT, IF ANY, IS THE LEGAL SIGNIFICANCE OF ARMY REGULATION 27-10, PARA. 3-44(b) AND 5-37(a) STATING THAT A RECORD OF NONJUDICIAL PUNISHMENT MAY BE ADMITTED AT COURTS-MARTIAL FROM ANY FILE IN WHICH IT IS PROPERLY "MAINTAINED" BY REGULATION WHILE PARAGRAPH 14-1(a) IDENTIFIES MILITARY JUSTICE ONLINE AS A TOOL FOR "MANAGING" VARIOUS ADVERSE ADMINISTRATIVE DOCUMENTS, INCLUDING NONJUDICIAL PUNISHMENT? AND WHAT SIGNIFICANCE, IF ANY, SHOULD WE PLACE ON THE FACT THAT PARAGRAPH 5-37 IS TITLED SENTENCING?

V.

WHAT IMPACT, IF ANY, DOES ARMY REGULATION 27-10, PARA. 3-37(h) REQUIRING A UNIT

PARALEGAL TO "MAINTAIN" A COPY OF NONJUDICIAL PUNISHMENT IN MILITARY JUSTICE ONLINE FOR A PERIOD OF TWO YEARS HAVE ON THIS COURT'S LEGAL DETERMINATION WHETHER RECORDS PULLED FROM MILITARY JUSTICE ONLINE ARE RECORDS THAT HAVE BEEN "MAINTAINED" IN ACCORDANCE WITH REGULATION FOR PURPOSES OF ADMISSION UNDER R.C.M. 1001? HOW DOES THE LANGUAGE OF ARMY REGULATION 27-10, PARA. 3-37(h), IF AT ALL, COMPORT WITH THE LANGUAGE IN PARAGRAPH 14-1(a) IDENTIFYING MILITARY JUSTICE ONLINE AS A TOOL FOR "MANAGING" VARIOUS ADVERSE ADMINISTRATIVE DOCUMENTS, INCLUDING NONJUDICIAL PUNISHMENT?

VI.

DOES THE FACT THAT ARMY REGULATION 27-10 STATES THAT MILITARY JUSTICE ONLINE IS A TOOL FOR "MANAGING" ADVERSE ADMINISTRATIVE INFORMATION IMPACT THIS COURT'S LEGAL DETERMINATION WHETHER RECORDS PULLED FROM MILITARY JUSTICE ONLINE ARE RECORDS THAT HAVE BEEN "MAINTAINED" IN ACCORDANCE WITH REGULATION FOR PURPOSES OF ADMISSION UNDER R.C.M. 1001?

The parties shall file four copies of the Joint Appendix by 26 May 2023.

Panel Composition: before the Court sitting en banc.

Spitz — ARMY 20220195

Date: 12 May 2023

R. TIDEMAN PENLAND, JR.
Colonel, JA
Senior Judge, Panel 3

CF: Chief, DAD
Chief, GAD
JALS-CR4
JALS-CRZ
JALS-TJ
JALS-CCO
JALS-CCC