UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
COOPER, WILLIAMS, and SCHLACK
Appellate Military Judges

ROBERT M. BABA
United States Army, Petitioner
v.
UNITED STATES, Respondent

ARMY MISC 20260384

For Petitioner: Robert Feldmeier, Esquire (on brief).

30 September 2026

SUMMARY DISPOSITION AND ACTION
ON PETITION FOR EXTRAORDINARY RELIEF
IN THE NATURE OF A WRIT OF ERROR CORAM NOBIS

This opinion is issued as an unpublished opinion and, as such, does not serve as precedent

COOPER, Senior Judge:

To warrant coram nobis relief, petitioner must satisfy "stringent threshold requirements." *Denedo v. United States*, 66 M.J. 114, 126 (C.A.A.F. 2008), aff'd, 556 U.S. 904 (2009). Here, petitioner has failed to do so.

Petitioner claims his trial and appellate defense counsel were ineffective for failing to challenge the government's use of the Federal Food, Drug, and Cosmetic Act (FFDCA) and Army Regulation 40-3, *Medical, Dental, and Veterinary Care* (23 Apr. 2013) [Army Reg. 40-3], relative to petitioner's conduct in Kuwait. Consequently, he asserts Kuwaiti law controlled whether he could self-dispense the medications, and since the government failed to reference Kuwaiti law, his conduct in self-administering medications "was apparently lawful."

We find petitioner has not satisfied two of the threshold requirements for coram nobis relief. He has not established valid reasons for failing to seek relief earlier, nor has he shown that the information supporting his present theory could not have been discovered through the exercise of reasonable diligence before the original judgment.

Moreover, even assuming petitioner could satisfy the threshold requirements, he has not established ineffective assistance of counsel. While a constitutional deprivation of effective assistance of counsel may, under certain circumstances, constitute an error of fundamental character, *Denedo*, 66 M.J. at 127, counsel is not deficient for declining to advance an argument unsupported by law. *See United States v. Palik*, 84 M.J. 284, 289 (C.A.A.F. 2015) ("When a claim of ineffective assistance of counsel is premised on counsel's failure to make a motion . . . an appellant must show that there is a reasonable probability that such a motion would have been meritorious." (citation omitted)).

BACKGROUND

Petitioner, the Chief of Pharmacy and Officer-In-Charge at Camp Arifjan, Kuwait, came under investigation for stealing numerous medications from the camp pharmacy. At his court-martial, petitioner pleaded guilty to one specification of willful dereliction of duty for failing to obtain valid prescriptions before dispensing medication to himself, in violation of Article 92, Uniform Code of Military Justice, 10 U.S.C. § 892 [UCMJ]. Petitioner was convicted by a military judge sitting as a general court-martial, contrary to his pleas, of three specifications of wrongful possession of a controlled substance and nine specifications of larceny of military property, in violation of Articles 112a, and 121, UCMJ. The military judge sentenced petitioner to be dismissed from the armed forces.

On appeal, petitioner challenged the legal and factual sufficiency of most of his convictions. *United States v. Baba*, ARMY 20210199, 2023 CCA LEXIS 269, at *1 (22 Jun. 2023) (mem. op.), pet. denied, 84 M.J. 270 (C.A.A.F. 2024). This court agreed, in part, and set aside the three wrongful possession convictions and two of the larceny convictions. *Id.*, at *18-19. This court affirmed the remaining findings and the adjudged sentence.[1] *Id.*

LAW & DISCUSSION

A. Jurisdiction

Our authority to confer a writ of coram nobis is derived from the All Writs Act, which allows "courts established by Act of Congress" to issue "all writs necessary or appropriate in aid of [its] respective jurisdiction." 28 U.S.C. § 1651(a). Where a remedy is available elsewhere, a writ is neither "necessary" nor

[1] The remaining findings included the specification of dereliction of duty to which appellant pled guilty, and seven specifications of larceny for stealing a certain amount of each of the following medications: metformin, metoprol (toprol XL), albendazole, metoprolol tartrate, ketorolac, citalopram, and hydroxychloroquine, in violation of Articles 93 and 121, UCMJ.

"appropriate." *Loving v. United States*, 62 M.J. 235, 247 (C.A.A.F. 2005) ("a writ may not be used . . . when another method of review will suffice." (citation omitted)). Further, petitioner must be able to establish his "clear and indisputable right to the requested relief." *Denedo*, 66 M.J. at 126.

An application for a writ of coram nobis is "properly viewed as a belated extension of the original proceeding during which the error allegedly transpired." *United States v. Denedo*, 556 U.S. 904, 913 (2009) (citation omitted). As such, the writ of coram nobis is "an extraordinary tool to correct a legal or factual error," *id.* at 912–13, that "requests the court that imposed the judgment to consider exceptional circumstances, such as new facts or legal developments, that may change the result." *Denedo*, 66 M.J. at 125. While a petition may be filed at any time, a petitioner must be able to "meet stringent threshold requirements" and show:

> (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.

Id. at 126 (citing *United States v. Morgan*, 346 U.S. 502, 512-13 (1954)). If petitioner is able to satisfy the threshold requirements, we may analyze petitioner's claim for ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668 (1984).

Here, petitioner has failed to satisfy the third and fourth threshold requirements by attempting to circumvent the lateness of his new argument by blaming his trial and appellate defense counsel. He claims, as a nonlawyer, he could not be aware of the purported limitations of the FFDCA and Army Reg. 40-3. However, petitioner's assertion that he is not an attorney, standing alone, neither excuses his delay nor establishes that the authorities on which he now relies could not have been discovered through the exercise of reasonable diligence before the original judgment. A petitioner's personal lack of legal training does not lower the stringent due diligence threshold required for extraordinary relief under coram nobis. *See Denedo*, 66 M.J. at 126 (describing coram nobis as an extraordinary remedy subject to "stringent threshold requirements," including valid reasons for delay and reasonable diligence).

The circumstances of petitioner's professional background and his own admissions at trial are detrimental to his claim. As the Chief of Pharmacy at Camp Arifjan, Kuwait, he was a credentialed pharmaceutical expert charged with the daily administration, oversight, and enforcement of federal law and Army drug dispensing regulations, the very same ones he is now averring to have not known about.[2] It is difficult to reconcile his specialized professional role with the contention that the federal laws and Army regulations governing the medications in his care could not have been discovered through reasonable diligence. In addition, during the providence inquiry, petitioner stated he had studied Army Reg. 40-3 and, based on his twenty-seven years as a pharmacist, understood that "Any legend drug require[d] a prescription."

Petitioner's professional duties and his statements at trial do not support his current assertion that his lack of legal training excused his failure to raise the present claim earlier. Nor do they establish that the relevant regulatory authorities could not have been discovered through the exercise of reasonable diligence. Petitioner identifies no newly discovered fact, intervening change in law, or other circumstances that prevented him from raising his current theory at trial or on direct appeal. The FFDCA and Army Reg. 40-3 upon which he relies were publicly available before entry of the original judgment. The petition therefore rests not on newly discovered information but on a belated legal theory based on publicly available authorities.

B. Ineffective Assistance of Counsel

Even assuming petitioner could satisfy the threshold requirements for the coram nobis relief, his petition nonetheless fails as he has not established ineffective assistance of counsel.

"When a claim of ineffective assistance of counsel is premised on counsel's failure to make a motion . . . an appellant must show that there is a reasonable probability that such a motion would have been meritorious." *Palik*, 84 M.J. at 289 (citations omitted). Petitioner contends that trial and appellate defense counsel were ineffective for failing to argue that the FFDCA and Army Reg. 40-3 did not apply extraterritorially in Kuwait. He asserts counsel should have sought dismissal of the

[2] Army Regulation 40-3, para.11-2*b*, expressly directs: "The chief, pharmacy services . . . will be charged with the duties of recognizing, identifying, selecting, ordering, preparing, safeguarding, evaluating, and dispensing all pharmaceutical substances (of whatever kind and combination) . . . [and] will be responsible for keeping abreast of new developments in the field of pharmacy and for operating the pharmacy in compliance with Federal laws, accreditation standards defined by the current accrediting body . . . ."

dereliction of duty specification to which he pleaded guilty and the larceny specifications involving legend drugs. Petitioner has not established a reasonable probability that such a motion would have been meritorious.

Petitioner alleges that his conduct in self-dispensing prescription medications was lawful because in the deployed environment, Kuwaiti law applied. We disagree. Army Regulation 40-3 is applicable during both deployments and mobilizations. Army Reg. 40-3, para. 11-1 ("[Chapter 11, "Pharmacy and Medication Management"] applies to Army pharmacy management services worldwide and is applicable . . . during deployments and mobilizations."). While certain subsections of the regulation direct compliance with host-nation law and applicable international treaties, that requirement functions as a supplemental compliance obligation in two specific circumstances;[3] it does not operate as a waiver of military command authority, nor does it suspend mandatory Army drug-control standards.[4]

Against that regulatory backdrop, petitioner acknowledged during his providence inquiry that "[a]s a pharmacist for 27 years" he knew without a doubt that "[a]ny legend drug require[d] a prescription." Petitioner therefore admitted both the existence of the prescription requirement and his knowing failure to comply with it. His admission—as Chief of Pharmacy with twenty-seven years of experience, charged with the obligation to understand and apply federal laws and Army policy for the dispensing of medication in the facility he was in charge of—undermines his contentions that Kuwaiti law applied to his actions while deployed, authorized him to dispense legend drugs to himself without a prescription, and counsel were deficient for failing to raise that theory.

Petitioner also contends that the FFDCA did not apply extraterritorially in Kuwait and counsel therefore should have sought dismissal of the charges involving legend drugs. However, the FFDCA was not the source of the charged offenses. Petitioner was not charged with a domestic regulatory violation of the FFDCA, but with dereliction of duty and larceny of government property under Articles 92 and

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[3] These circumstances apply only to medical laboratory tests and prescription *writing*. Army Reg. 40-3, para. 14-9(b)(4) (noting the "laws of the foreign country" will be followed regarding requests for medical laboratory tests), and para. 11-13(i) ("noting the same for prescriptions written outside of the United States).

[4] Army Regulation 40-3, para. 11-14(e)(3), "Dispensing procedures," makes clear that the military treatment facility commander "will ensure that written procedures for dispensing controlled medications comply with *Federal laws and Army regulations*." (emphasis added). Notably absent is any reference to host-nation law. We do not read paragraph 11-13(i) as an exception to a completely separate requirement in paragraph 11-14(e). And, as noted below, the UCMJ applies to servicemembers "in all places". UCMJ art. 5.

121, UCMJ. *United States v. Martinelli*, 62 M.J. 52 (C.A.A.F. 2005), does not compel a different result. *Martinelli* addressed the overseas application of a federal statute charged through Article 134, UCMJ, clause 3. *Id.* at 53-54. Here, petitioner was prosecuted under Articles 92 and 121, UCMJ, not for a violation of a federal statute incorporated through Article 134.

Finally, the UCMJ "applies in all places." UCMJ art. 5. Articles 92 and 121, UCMJ, therefore, applied to petitioner's conduct in Kuwait. Petitioner has not shown that the asserted extraterritorial limitation of the FFDCA would defeat an element of his dereliction or larceny offenses or otherwise provide a basis to dismiss the specifications. Even assuming the FFDCA supplied the definition of "legend drug" referenced in Army Reg. 40-3, petitioner's offenses did not depend on the FFDCA's extraterritorial application. Army Regulation 40-3 applies to Army pharmacy management services worldwide and requires a valid prescription for the dispensing of legend drugs. *See* Army Reg. 40-3, paras. 11-1, 11-14. Accordingly, petitioner has not established a reasonable probability that the proposed motion would have been meritorious. Trial defense counsel were not deficient for declining to raise the argument, and appellate defense counsel were not deficient for declining to raise it on review.[5]

Petitioner has not satisfied the threshold requirements for coram nobis relief. Even assuming petitioner satisfied the threshold requirements, he has not established ineffective assistance of counsel.

NOW, THEREFORE, IT IS ORDERED:

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

Judge WILLIAMS and Judge SCHLACK concur.

FOR THE COURT:

[redacted]

JAMES W. HERRING, JR.
Clerk of Court

[5] Petitioner nonetheless had the ability to raise this issue as error pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982). We note he failed to do so.