

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
CAMPANELLA, HERRING and WOLFE
Appellate Military Judges

UNITED STATES, Appellee
v.
Private First Class KARINA FLORES-SANTOS
United States Army, Appellant

ARMY 20140066

Headquarters, III Corps and Fort Hood
Wade N. Faulkner, Military Judge (trial)
Jacob D. Bayshore, Military Judge (DuBay)
Colonel Richard W. Rousseau, Staff Judge Advocate (pretrial)
Colonel Ian G. Corey, Staff Judge Advocate (post-trial)
Lieutenant Colonel Joseph M. Fairfield, Acting Staff Judge Advocate (DuBay)

For Appellant: Lieutenant Colonel Charles Lozano, JA; Major Andres Vazquez, Jr., JA; Major Daniel E. Goldman, JA (on brief); Colonel Mary J. Bradley, JA; Major Andres Vazquez, Jr, JA; Major Daniel E. Goldman, JA (on motion for reconsideration and suggestion for reconsideration en banc).

For Appellee: Colonel Mark H. Sydenham, JA; Lieutenant Colonel A.G. Courie, III, JA; Major Daniel D. Derner, JA; Captain Christopher A. Clausen, JA (on brief).

24 April 2017

SUMMARY DISPOSITION ON FURTHER REVIEW

CAMPANELLA, Senior Judge:

A general court-martial composed of a military judge sitting alone convicted appellant, consistent with her pleas, of attempted distribution of a controlled substance, conspiracy to distribute a controlled substance, introduction of marijuana, distribution of a controlled substance, and wrongful use of cocaine in violation of Articles 80, 81, and 112a of the Uniform Code of Military Justice, 10 U.S.C. §§ 880, 881, 912a (2012) [hereinafter UCMJ]. The convening authority approved the adjudged sentence of a bad-conduct discharge, ten months confinement, and reduction to the grade of E-1.

On 8 June 2016 this court summarily affirmed the findings and sentence in this case. *United States v. Flores-Santos*, ARMY 20140066 (Army Ct. Crim. App. 8 Jun. 2016) (summ. disp.). On 7 July 2016 appellant filed a motion for reconsideration and a suggestion for reconsideration by the court en banc. We granted the motion for reconsideration and again affirmed the findings and sentence. *United States v. Flores-Santos*, ARMY 20140066 (Army Ct. Crim. App. 29 Jul. 2016) (mem. op.).

Our superior court set aside our decision and remanded appellant's case for a hearing pursuant to *United States v. DuBay*, 17 C.M.A. 147, 37 C.M.R. 411 (1967), to make findings of fact and conclusions of law related to the matter underlying the granted issue, which was:

WHETHER THE MILITARY JUDGE WAS
DISQUALIFIED FROM PRESIDING IN APPELLANT'S
CASE WHERE HE PREVIOUSLY SERVED AS CHIEF
OF JUSTICE AND SUPERVISED ALL PROSECUTIONS
FOR APPELLANT'S UNIT, AND HE FAILED TO
DISCLOSE THE FULL EXTENT OF HIS
RESPONSIBILITIES AND ACTIONS FROM HIS PRIOR
POSITION, INCLUDING CONSULTING ON CASES AT
THE PRE-PREFERRAL AND INVESTIGATION STAGE.

United States v. Flores-Santos, 76 M.J. 42 (C.A.A.F. 2016).

The *DuBay* hearing was conducted on 6 March 2017 and the military judge made findings of fact and conclusions of law in his Ruling on *DuBay* Issue Regarding Military Judge's Qualification. (App. Ex. XIII). We hereby adopt his findings of fact and conclusions of law. We agree that Lieutenant Colonel (LTC) (Ret.) Faulkner:

[W]as not disqualified under [Rule for Courts-Martial (hereinafter RCM)] 902(b) as he was not "counsel" in this case, and that even though Appellant waived any issues regarding [R.C.M.] 902(a) disqualification, when considering the trial as a whole, a reasonable person would not question the partiality of LTC (Ret.) Faulkner. Even if this Court were to presume that [R.C.M.] 902(a) was violated and that Appellant did not waive that issue, this Court finds no material prejudice to Appellant or other facts that necessitate a re-hearing to ensure the public retains confidence in the military justice system.

CONCLUSION

For the reasons stated previously, the findings of guilty and the sentence are AFFIRMED.

Judge HERRING and Judge WOLFE concur.



FOR THE COURT:

A handwritten signature in black ink, which appears to read "Malcolm H. Squires, Jr.", is written over the printed name.

MALCOLM H. SQUIRES, JR.
Clerk of Court