

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* Hearing)
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* Hearing)

For Appellant: Lieutenant Colonel Charles Lozano, JA; Major Andres Vazquez, Jr., JA; Major Daniel E. Goldman, JA (on brief); Colonel Mary J. Bradley, JA; Lieutenant Colonel Christopher D. Carrier, JA; Major Daniel E. Goldman, JA (on brief following *DuBay* Hearing); Colonel Mary J. Bradley, JA; Major Andres Vazquez, Jr., JA; Major Daniel E. Goldman, JA (Motion for En Banc Reconsideration).

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); Lieutenant Colonel Eric K. Stafford, JA; Major Michael E. Korte, JA; Captain Christopher A. Clausen, JA (on brief following *DuBay* Hearing).

24 July 2017

SUMMARY DISPOSITION ON RECONSIDERATION

CAMPANELLA, Senior Judge:

A military judge sitting as a general court-martial 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, 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2016) (unpublished). 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 (denying the suggestion for review en banc), and again affirmed the findings and sentence. *United States v. Flores-Santos*, ARMY 20140066, 2016 CCA LEXIS 459 (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 U.S.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) (capitalization modified).

The *DuBay* hearing occurred 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). The record was returned to this court and defense appellate counsel on 20 March 2017. On 24 April 2017, this court affirmed the findings and sentence. *United States v. Flores-Santos*, ARMY 20140066, 2017 CCA LEXIS 272 (Army Ct. Crim. App. 29 Jul. 2016) (summ. disp.). On 17 May 2017, appellant submitted a request for reconsideration, which we granted. Upon consideration of the submissions of defense appellate counsel and the government, we again adopt the findings of fact and conclusions of law of the *DuBay* judge.

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, appearing to read "Malcolm H. Squires, Jr.".

MALCOLM H. SQUIRES, JR.
Clerk of Court