

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
CAMPANELLA, HERRING, and PENLAND
Appellate Military Judges

UNITED STATES, Appellee

v.

**Sergeant
United States Army, Appellant**

ARMY

Headquarters, United States Army Maneuver Center of Excellence (trial)
Headquarters, United States Army Military District of Washington (DuBay)
Charles A. Kuhfahl Jr., Military Judge (trial)
S. Charles Neill, Military Judge (DuBay)
Colonel Charles C. Poché, Staff Judge Advocate (trial)
Colonel John P. Carrell, Staff Judge Advocate (DuBay)

For Appellant: Captain Amanda Renée McNeil Williams, JA; Philip D. Cave, Esquire; J. Thomas Province, Esquire (on brief); Captain Joshua B. Fix, JA; Philip D. Cave, Esquire; J. Thomas Province, Esquire (on reply brief).

For Appellee: Colonel Mark H. Sydenham, JA; Lieutenant Colonel A.G. Courie, III, JA; Major Cormac M. Smith, JA; Captain Linda Chavez, JA (on brief).

2 May 2017

SUMMARY DISPOSITION ON FURTHER REVIEW

HERRING, Judge:

A general court-martial composed of a military judge sitting alone convicted appellant, contrary to his pleas, of four specifications of indecent acts with a child and communicating a threat in violation of Article 134 of the Uniform Code of Military Justice, 10 U.S.C. § 934 (2006) [hereinafter UCMJ]. The military judge sentenced appellant to a bad-conduct discharge, confinement for three years, and reduction to the grade of E-1. The convening authority dismissed Specification 8 of Charge III because it was barred by the statute of limitation and approved only so much of the sentence as provided for a bad-conduct discharge, confinement for thirty-six months, and reduction to the grade of E-2.

JALS-DA

On 23 November 2016 this court returned appellant's record of trial to The Judge Advocate General for a hearing pursuant to *United States v. DuBay*, 17 U.S.C.M.A. 147, 37 C.M.R. 411 (1967). *United States v. _____*, ARMY (Army Ct. Crim. App. 23 Nov. 2016) (order). On 2 February 2017, the *DuBay* hearing concluded. The military judge made findings of fact and conclusions of law with respect to whether appellant's defense counsel were ineffective. (App. Ex. LXXXIII). We hereby adopt his findings of fact and conclusions of law. We agree that defense counsel were deficient in failing to: 1) "present evidence about [TB's] motives to engineer this prosecution and her repeated statements that she would make sure [appellant] was punished;" 2) "conduct a full investigation regarding [TB] and her motives to fabricate;" and 3) "prepare [appellant] to testify." Appellant was found not guilty of nineteen specifications. The five specifications of which he was found guilty all involved TB's children. We agree there is a reasonable probability of a more favorable result had the deficiencies not occurred.

CONCLUSION

For the reasons stated previously, the findings of guilty and the sentence are set aside. A rehearing may be ordered by the same or a different convening authority. All right, privileges, and property, of which appellant has been deprived by virtue of the findings and sentence set aside by this decision, are ordered restored. *See* UCMJ arts. 58a(b), 58b(c), 75(a).

Senior Judge CAMPANELLA and Judge PENLAND concur.

FOR THE COURT:

MALCOLM H. SQUIRES, JR.
Clerk of Court