

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

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UNITED STATES

v.

**Major STEVEN T. BISHOP**  
**United States Air Force**

**ACM 37003**

**30 July 2008**

Sentence adjudged 06 March 2007 by GCM convened at Bolling Air Force Base, District of Columbia. Military Judge: Gary M. Jackson (sitting alone).

Approved sentence: Dismissal, forfeiture of \$1,754.00 pay per month for 27 months, and a fine of \$21,782.00.

Appellate Counsel for the Appellant: Captain Griffin S. Dunham (argued), Lieutenant Colonel Mark R. Strickland, and Major David P. Bennett.

Appellate Counsel for the United States: Major Brendon K. Tukey (argued), Colonel Gerald R. Bruce, and Major Amy E. Hutchens.

Before

WISE, FRANCIS, and HEIMANN  
Appellate Military Judges

OPINION OF THE COURT

This opinion is subject to editorial correction before final release.

FRANCIS, Senior Judge:

Consistent with his pleas, the appellant was convicted of one specification of dereliction of duty through improper use of his government travel card and 65 specifications of travel voucher fraud, in violation of Articles 92 and 132, 10 U.S.C. §§ 892 and 932. A military judge sentenced him to a dismissal, 27 months confinement, forfeiture of \$1,754 pay per month for 27 months, and a fine of \$21,782, with an additional 27 months confinement if the fine is not paid. The convening authority,

pursuant to a pre-trial agreement, approved only so much of the sentence as provided for a dismissal, forfeiture of \$1,754 pay per month for 27 months, and a fine of \$21,782.

The appellant raises one error. He asserts the court-martial lacked personal jurisdiction over him because he was discharged from the Air Force prior to trial. The government, rather than addressing the merits of the purported jurisdictional defect, moved for an order from the Court prohibiting the appellant from even raising the issue, on the grounds that the appellant was previously convicted of fraudulent discharge.<sup>1</sup> We deny the government's motion but, finding no error, affirm.

*Article 3(b), UCMJ*

The appellant was originally charged with both fraudulent discharge, in violation of Article 83, UCMJ, 10 U.S.C. § 883, and a number of other offenses that occurred prior to his purported discharge from the Air Force. In such cases, Article 3(b), UCMJ, 10 U.S.C. § 803(b), requires a two-trial process. The accused must first be tried for the alleged fraudulent discharge. *United States v. Reid*, 46 M.J. 236, 238 (C.A.A.F. 1997). If convicted of that offense, he may then be tried for any other offenses occurring prior to that fraudulent discharge. *Id.*

Pursuant to Article 3(b), UCMJ, the government initiated two trials against the appellant. In January 2007, contrary to his plea, he was convicted of one specification of fraudulent discharge. The adjudged and approved sentence consisted of a reprimand, triggering review by the office of the Judge Advocate General under Article 69, UCMJ, 10 U.S.C. § 869. That review has now been completed and the case has become final within the meaning of Article 76, UCMJ, 10 U.S.C. § 876.

In March 2007, the appellant was tried for the remaining charges, resulting in the conviction *sub judice*. He raises the in personam jurisdictional attack for the first time on appeal, relying on the same discharge found to be fraudulent at his first court-martial. Both in briefs to this Court and in oral argument, the appellant's counsel expressly stated that the appellant is not challenging the finality of his prior conviction for fraudulent discharge. Nonetheless, he asserts he is entitled to raise the same discharge as a defense in the second trial, forcing re-litigation of the same issue. In contrast, the government argues that, given the result of the first trial, the appellant is completely precluded from raising the jurisdictional issue at the second trial.

We decline to follow the extreme position advocated by the government. Article 66(c), UCMJ, 10 U.S.C. § 866(c), gives this Court a very broad mandate "to do justice." *United States v. Parker*, 36 M.J. 269, 271 (C.M.A. 1993) (quoting *United States v. Claxton*, 32 M.J. 159 (C.M.A. 1991)). To fulfill that mandate, counsel representing

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<sup>1</sup> The Court heard oral argument on the government motion on 18 July 2008.

appellants before this Court must be allowed to raise for consideration any issue deemed in the best interest of their clients, bounded only by the constraints of professional representation and ethics. This is especially true of jurisdictional challenges, which are never waived and may be raised at any stage of the proceedings. *Reid*, 46 M.J. at 240. Accordingly, the government's motion to completely preclude the appellant from raising the jurisdictional issue before this Court is denied.

Notwithstanding the above, just because the appellant is permitted to raise a jurisdictional issue does not mean it has merit. It is clear from the record of trial, and from documents admitted by the Court in connection with this appeal, that the discharge on which the appellant now relies to contest court-martial jurisdiction is the same discharge determined by his first court-martial to have been fraudulently obtained. Upon his conviction of and sentence for that offense at the first trial, "the discharge no longer is valid, thereby continuing court-martial jurisdiction over [his] person for offenses committed prior to the purported discharge." *Reid*, 46 M.J. at 238. Thus, given the bifurcated trial process mandated by the plain language of Article 3(b), UCMJ, the appellant is bound by that result and, unless the result of the first trial is overturned, cannot look behind that conviction and re-litigate the legitimacy of the underlying discharge at the second trial. Any other result would render Article 3(b), UCMJ, meaningless.

There is nothing in the record before us to indicate that the result of the appellant's first court-martial should be overturned. Indeed, the appellant has affirmatively indicated that he does not challenge the result or finality of that first conviction. That being the case, we need proceed no further to resolve the jurisdictional issue here raised by the appellant, finding it without merit. The appellant could, of course, raise a jurisdictional challenge based on something other than the legitimacy of the contested discharge. He has not done so and we find nothing in the current record that would support such a challenge.

### *Conclusion*

The approved findings and sentence are correct in law and fact and no error prejudicial to the substantial rights of the appellant occurred. Article 66(c), UCMJ; *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000).

Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL



STEVEN LUCAS, YA-02, DAF  
Clerk of the Court