

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	Misc. Dkt. No. 2010-01
Petitioner)	
)	
v.)	
)	
Lieutenant Colonel (O-5))	
GRANT L. KRATZ,)	ORDER
USAF)	
Respondent)	
)	
Airman First Class (E-3))	
ADAM C. BORGMAN,)	
USAF)	
Real Party In Interest)	Special Panel

On 7 January 2010, counsel for the Petitioner filed a Petition for Extraordinary Relief in the Nature of a Writ of Mandamus, requesting this Court order the military judge to withdraw the indefinite continuance and schedule the case for trial at the earliest possible date. The Petitioner filed a Motion to Submit Documents contemporaneously with the Petition for Extraordinary Relief.

Accordingly, it is by the Court on this 12th day of February, 2010,

ORDERED:

That the Petitioner’s Motion to Submit Documents is hereby **GRANTED**.

IT IS FURTHER ORDERED:

That pursuant to Rule for Courts-Martial (R.C.M.) 906(b)(1), the military judge has the authority to grant a continuance and such a continuance may be for as long and as often as is just. Whether a request for a continuance should be granted is a matter within the discretion of the military judge. R.C.M. 906(b)(1), Discussion.

The military judge in the case at hand granted a continuance until such time as the Court of Appeals for the Armed Forces (CAAF) acts on the 6 January 2010 petition for review of the decision issued by this Court granting the Petitioner’s Article 62, UCMJ, 10 U.S.C. § 862, appeal. Pursuant to R.C.M. 908(c)(3), should CAAF grant the petition for

review, the proceedings could be ordered stayed pending decision on the petition for review. The military judge noted this procedure in granting the continuance, concluding that the best course of action is to await the decision of our superior court before setting a new trial date. We conclude the military judge did not abuse his discretion in granting this continuance.

Additionally, we note R.C.M. 908(c)(3) provides: “Unless the case is reviewed by [CAAF], it shall be returned to the military judge.” Consistent with this rule, we conclude it was appropriate and in the interest of judicial economy to continue the case until such time as CAAF decides whether to grant review.

Finally, we conclude the matter is not appropriate for issuance of a writ of mandamus pursuant to The All Writs Act, 28 U.S.C. Section 1651. Therefore the Petition for Extraordinary Relief in the Nature of a Writ of Mandamus is hereby **DENIED**.

FOR THE COURT

OFFICIAL



A handwritten signature in blue ink, appearing to read "S. Lucas", is written over the seal and extends to the right.

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