

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	Misc. Dkt. No. 2013-03
Respondent)	
)	
v.)	
)	ORDER
Master Sergeant (E-7))	
PATRICK CARTER,)	
USAF,)	
Petitioner)	Panel No. 2

Background

Contrary to his pleas, the Petitioner was convicted of one specification of taking indecent liberties with a child under the age of 16, one specification of child endangerment and one specification of committing indecent acts with a child under the age of 16 in violation of Articles 120 and 134, UCMJ, 10 U.S.C. §§ 920, 934.¹ The adjudged sentence consisted of a dishonorable discharge, confinement for 4 years, forfeiture of all pay and allowances, and reduction to the grade of E-1. The convening authority disapproved the finding of guilty with respect to taking indecent liberties with a child under the age of 16, and approved the remaining findings. The approved sentence consisted of a dishonorable discharge, 3 years confinement, forfeitures of all pay and allowances and reduction to the grade of E-1. Based on that approved sentence, the appellant’s term of confinement ends on 25 February 2013.

On 4 January 2013, this court set aside the findings and sentence. The Petitioner applied to this court on 7 January 2013, seeking Extraordinary Relief in the Nature of a Writ of Habeas Corpus directing Respondents to immediately release the petitioner from confinement. Prior to this court acting on that petition, on 14 January 2013, the Petitioner filed a similarly entitled motion to the Court of Appeals for the Armed Forces (CAAF) requesting relief. On 16 January 2013, CAAF ordered the Respondents to show cause why the Petitioner’s writ should not be granted. Following the government’s response, CAAF denied the Petitioner’s Writ of Habeas Corpus on 22 January 2013. We subsequently denied the Writ on 25 January 2013. Respondent filed a timely motion for en banc reconsideration with this court on 4 February 2013. That motion is still pending before this court but Petitioner once again requests that he be released from confinement.

¹ The appellant was acquitted of one specification of raping a child under the age of 12, one specification of raping a child between the ages of 12 and 16, one specification of aggravated sexual assault of a child between the ages of 12 and 16, one specification of sodomy with a child under the age of 12, and one specification of sodomy with a child between the ages of 12 and 16, in violation of Articles 120, and 125 UCMJ, 10 U.S.C. §§ 920, 925.

Discussion

A decision of a military Court of Criminal Appeals (CCA) is not self-executing, as “the judicial branch ... depends on the Judge Advocate General and lower officials to execute its orders.” *United States v. Miller*, 47 M.J. 352, 361 (C.M.A. 1997). The government has 30-days to seek reconsideration of a CCA decision following its issuance and 60-days to certify the case to the Court of Appeals for the Armed Forces for mandatory review under Article 67(a)(2). *See* Rule 19.2, Rules of Practice and Procedure, Air Force Court of Criminal Appeals and Rules of Practice and Procedure, Court of Appeals for the Armed Forces, Rules 19(b) and 22(b). If the government files a timely petition for reconsideration, the Judge Advocate General’s 60-day deadline for certification with CAAF begins to run when the CCA takes action on that petition. Rules of Practice and Procedure, Court of Appeals for the Armed Forces, Rule 34(a); *See United States v. Kreutzer*, 70 M.J. 444, 450 (C.A.A.F.) (Erdmann, J. dissenting) (Normally, the two periods run concurrently but if the government requests the CCA reconsider its decision, the 30 and 60-day periods are decoupled and the government has 60 days from the date of the CCA’s denial of reconsideration to certify the issue to CAAF).

As the government’s petition for reconsideration does not render the CCA’s initial decision final, the appellant remains incarcerated until we take action on that petition and the Judge Advocate General then decides whether to certify the case to CAAF or the 60-day time period expires without such certification occurring. *Miller*, 47 M.J. at 362. In the case before us now, the Respondent filed a request for reconsideration within the 30-day window permitted by our rules. As such, our original decision remains inchoate, as does the appellant’s interest in that decision and we decline to order his release from confinement. *United States v. Kraffa*, 11 M.J. 453, 456-457 (C.M.A. 1981); *Miller*, 47 M.J. at 361.

Accordingly, pursuant to 28 U.S.C. § 1651(a), “the All Writs Act,” it is by the Court on this 8th day of February, 2013,

ORDERED:

That the petitioner’s Writ of Habeas Corpus is hereby **denied**.



FOR THE COURT

STEVEN LUCAS
Clerk of the Court