

**UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS**

Damario A. COLEMAN)	Misc Dkt No. 2018-02
Senior Airman (E-4))	
U.S. Air Force)	
<i>Petitioner</i>)	
)	
v.)	
)	ORDER
UNITED STATES)	
<i>Respondent</i>)	Panel 2

Petitioner was convicted by a general court-martial composed of officer members of one specification of rape, three specifications of aggravated sexual assault, and one specification of forcible sodomy in violation of Articles 120 and 125, Uniform Code of Military Justice (UCMJ), 10 U.S.C. §§ 920, 925. On 29 September 2012, Petitioner was sentenced to a dishonorable discharge, confinement for 12 years, forfeiture of all pay and allowances, and reduction to the grade of E-1. On 1 March 2013, the convening authority approved the sentence as adjudged. This court affirmed the findings and sentence. *United States v. Coleman*, No. ACM 38287, 2014 CCA LEXIS 528, at *13 (A.F. Ct. Crim. App. 29 Jul. 2014). The United States Court of Appeals for the Armed Forces (CAAF) denied review. *United States v. Coleman*, 74 M.J. 78 (C.A.A.F. 2014). Appellant remains in confinement pursuant to his sentence.

On 10 April 2018, Petitioner filed a Petition for Writ of Error Coram Nobis with this court, seeking a rehearing or, in the alternative, a new appellate review pursuant to Article 66, UCMJ, 10 U.S.C. § 866, in light of the CAAF's decision in *United States v. Hills*, 75 M.J. 350 (C.A.A.F. 2016).

A petitioner for a writ of coram nobis has the burden to show a clear and indisputable right to the extraordinary relief requested. *Denedo v. United States*, 66 M.J. 114, 126 (C.A.A.F. 2008), *aff'd and remanded*, 556 U.S. 904 (2009) (citing *Cheney v. United States Dist. Court*, 542 U.S. 367, 381 (2004)). Petitioner contends he meets the criteria for coram nobis relief from this court because no other avenue of relief is available to him. However, he acknowledges contrary authority from the CAAF and from this court. *See United States v. Gray*, 77 M.J. 5, 6 (C.A.A.F. 2017) (holding CAAF lacks jurisdiction to entertain a request for coram nobis relief where a case is final under the UCMJ and that coram nobis relief is unavailable where a petitioner is still in confinement); *Lewis v. United States*, 76 M.J. 829, 834 (A.F. Ct. Crim. App. 2017) (holding coram nobis relief is not available where a petitioner may seek a writ

of habeas corpus from a federal district court or where the petitioner continues to serve a sentence to confinement). In addition, Petitioner fails to address our holding in *Lewis* that the new rule of criminal procedure announced in *Hills* does not apply retroactively to cases such as his that were final at the time the new rule was announced. 76 M.J. at 836.

Accordingly it is by the court on this 4th day of May, 2018,

ORDERED:

The Petition for Writ of Error Coram Nobis is hereby **DENIED**.



FOR THE COURT

A handwritten signature in black ink, appearing to read "Laquitta J. Smith".

LAQUITTA J. SMITH

Appellate Paralegal Specialist