

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	Misc. Dkt. No. 2011-03
Respondent)	
)	
v.)	
)	ORDER
Master Sergeant (E-7))	
KEITH M. HALL)	
USAF,)	
Petitioner)	Panel No. 2
)	

The petitioner applied to this Court on 10 May 2011, seeking Extraordinary Relief in the Nature of a Writ of Habeas Corpus or in the alternative, a Writ of Mandamus Ordering Respondents to release the petitioner from the U. S. Naval Consolidated Brig, Miramar, California, no later than 15 May 2011.

On 17 February 2011, contrary to his pleas, the petitioner was convicted of violating Article 134, UCMJ by knowingly possessing one or more visual depictions of what appears to be minors engaging in sexually explicit conduct. The military judge sentenced the petitioner to be dishonorably discharged from the service, confinement for 18 months, forfeiture of all pay and allowances and reduction to E-1. On 14 April 2011, the convening authority took action approving the findings and only so much of the sentence as provided for a bad conduct discharge, confinement for 18 months, forfeiture of all pay and allowances and reduction to E-1.

On 9 May 2011, the petitioner’s trial defense counsel requested in writing that the convening authority modify his action by disapproving the punitive discharge and forfeitures in excess of two-thirds pay per month for four months. The basis for the petitioner’s request was the case of *United States v. Beaty*, 70 M.J. 39 (C.A.A.F. 2011), a recent decision by the United States Court of Appeals for the Armed Forces (C.A.A.F.). As per the holding in *Beaty*, the maximum punishment authorized for a conviction of possessing “what appear to be” minors engaged in sexually explicit conduct is four months of confinement and forfeiture of two-thirds pay per month for four months. Consistent with this holding, the petitioner requested to be released from confinement no later than 15 May 2011, the date he determined was his minimum release date. The convening authority denied the petitioner’s request.

On 10 May 2011, the petitioner asked this Court to order his requested relief immediately. On 11 May 2011, even though a request for reconsideration was pending before C.A.A.F., we asked the United States to show cause why the petitioner should or should not be granted relief. On 16 May 2011, the United States accepted the petitioner's statement of the case and asked this Court not to take any action while the petition for reconsideration was pending before our superior court. On 19 May 2011, the C.A.A.F. denied the United States' request for reconsideration in the *Beaty* case. *United States v. Beaty*, ___ M.J. ___, No. 10-0494/AF (Daily Journal 19 May 2011). United States Court of Appeals for the Armed Forces, Rules of Practice and Procedure, Rule 43A(a) (1 September 2009), provides in pertinent part: "If the petition [for reconsideration] is denied, the mandate shall issue 7 days after the entry of the order denying the petition, unless the time is shortened or enlarged by order." As a result, for the purposes of this petition, this Court considers the decision in *Beaty* as final.

Although this case has yet to be submitted to this Court for review under Article 66(c), UCMJ, 10 U.S.C. § 866(c), both sides indicate that the approved findings in this case are similar to findings in *Beaty*. As a result, based on our opinion that the decision in the *Beaty* case is final, this Court is limited to approving a sentence no greater than the maximum punishment authorized for disorderly conduct. While it is clear that the maximum confinement authorized for disorderly conduct is four months, the parties disagree on the petitioner's release date.

While this Court is cognizant of the United States' statutory right to seek Supreme Court review, the United States has not given this Court any indication that it intends to exercise this right. Without any such indication, this Court believes it is unjust to allow the petitioner to serve time in confinement in excess of the maximum amount of confinement authorized in light of the ruling in *Beaty*.

Accordingly, pursuant to 28 U.S.C. § 1651(a), "the All Writs Act," it is by the Court on this 31st day of May, 2011,

ORDERED:

That the petitioner's writ of habeas corpus is **Denied**. The petitioner's writ of mandamus is **Granted**. The United States shall recalculate the petitioner's appropriate release date based upon a four-month sentence to confinement.

If such date has already passed, the petitioner shall be released immediately.

FOR THE COURT

OFFICIAL



A handwritten signature in blue ink, appearing to read "S. Lucas", is written over a horizontal line.

STEVEN LUCAS
Clerk of the Court