

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

<b>Airman (E-2),</b> <b>SAMUEL C. McCRRARY</b> <b>USAF,</b>  <p style="text-align: right;"><b>Petitioner</b></p>	)	<b>Misc. Dkt. No. 2014-12</b>
	)	
<b>v.</b>	)	
	)	<b>ORDER</b>
<b>Colonel (O-6)</b> <b>GREGORY O. FRIEDLAND</b> <b>Military Judge</b> <b>USAF,</b>  <p style="text-align: right;"><b>Respondent</b></p>	)	<b>Panel No. 1</b>
	)	

The petitioner is the accused in a case pending trial by court-martial for various alleged offenses. He seeks a writ of mandamus prohibiting his court-martial from proceeding, alleging errors were committed in the pretrial investigation of his case under Article 32, UCMJ, 10 U.S.C. § 832.

The petitioner’s case was originally investigated and then charges were withdrawn. The government then preferred new charges against the petitioner, with some additions and modifications from the charges originally preferred and investigated. The essential basis of the petition is that during the second pretrial investigation hearing, the government was allowed to call several witnesses (including the primary complaining witness) and merely have them adopt their previous statements. The investigating officer, according to the petitioner, did not allow the defense to ask any cross-examination questions that covered material contained in their summarized testimony from the previous pretrial investigation hearing. The petitioner therefore complains that he did not receive a “new” pretrial hearing when the second group of charges was preferred.

The All Writs Act, 28 U.S.C. § 1651(a) authorizes “all courts established by Act of Congress [to] issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law”). This court, like Article III tribunals, is empowered to issue extraordinary writs under the All Writs Act. *Denedo v. United States*, 556 U.S. 904, 911 (2009). The Supreme Court has held that three conditions must be met before a court may provide extraordinary relief in the form of a writ of mandamus: (1) the party seeking the writ must have “no other adequate means to attain the relief”; (2) the party seeking the relief must show that the “right to issuance of the relief is clear and indisputable”; and (3) “even if the first two prerequisites have been

met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances.” *Cheney v. United States Dist. Court*, 542 U.S. 367, 380–81 (2004) (internal quotation marks omitted).

A writ of mandamus is “a drastic remedy to be used sparingly.” *Morgan v. Mahoney*, 50 M.J. 633, 634 (A.F. Ct. Crim. App. 1999) (citing *Will v. United States*, 389 U.S. 90, 95 (1967)). “To justify reversal of a discretionary decision by mandamus, we must be satisfied that the decision amounted ‘to a judicial usurpation of power or be characteristic of an erroneous practice which is likely to recur.’” *Id.* (quoting *Murray v. Haldeman*, 16 M.J. 74, 76 (C.M.A. 1983)). It is appropriate to consider the merits of a petition in three instances: (1) where the petitioner develops substantial arguments denying the right of the military to try him; (2) where prompt review will conserve time, energy, cost and the ordeal of a trial; and (3) where the issues to be resolved are recurrent and will inevitably be faced by appellate courts in many future cases. *Id.* (citing *Murray*, 16 M.J. at 76-77).

Having reviewed the materials provided by the petitioner, we hold that the petitioner is not entitled to the relief requested. We find no indication that the errors the petitioner alleges are “recurrent and will inevitably be faced by appellate courts in many future cases.” We also see no “clear and indisputable” right to issuance of the writ under these circumstances. Therefore, we conclude the matter is not appropriate for issuance of the drastic remedy a writ of mandamus or other extraordinary relief.

Accordingly, it is by the Court on this 21st day of October, 2014,

**ORDERED:**

The Petition for Extraordinary Relief is **DENIED** without prejudice to Petitioner’s right to raise these matters in the normal course of review under the UCMJ.



FOR THE COURT

A handwritten signature in black ink, appearing to read "L M C", is written over the printed name.

LEAH M. CALAHAN  
Deputy Clerk of the Court