

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

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|----------------------------------|---|------------------------|
| Airman (E-2) |) | Misc. Dkt. No. 2009-03 |
| LEE W. PAYTON, |) | |
| USAF, |) | |
| |) | |
| Petitioner |) | |
| |) | |
| v. |) | ORDER |
| |) | |
| Lieutenant Colonel (O-5) |) | |
| DON CHRISTENSON, Military Judge, |) | |
| USAF, |) | |
| |) | |
| Respondent |) | Panel No. 3 |

On 15 June 2009, the petitioner filed a petition for extraordinary relief, in the nature of a Writ of Mandamus. Specifically, he asks this Court to direct the military judge presiding over his court-martial to dismiss specifications alleging aggravated sexual assault and abusive sexual conduct, in violation of Article 120, UCMJ, 10 U.S.C. § 920. The petitioner argues that Article 120, UCMJ, violates his constitutional right to due process by shifting the burden of proof as to “consent” to the accused and that the military judge’s application of that requirement in the petitioner’s trial is “illogical and unconstitutional.”

This Court has authority to issue extraordinary writs when "necessary or appropriate in aid of [our jurisdictional mandate]." *Andrews v. Heupel*, 29 M.J. 743, 746 (A.F.C.M.R. 1989) (quoting 28 U.S.C. § 1651(a)). However, "issuance of an extraordinary writ is a drastic remedy which should only be invoked in those situations which are truly extraordinary. An extraordinary writ is not to be a substitute for an appeal even though hardship may ensue from delay and perhaps an unnecessary trial." *Id.* at 746-47. “To justify extraordinary relief, the petitioner bears the burden of demonstrating that he is entitled to it as a clear and indisputable right.” *Aviz v. Carver*, 36 M.J. 1026, 1028 (N.M.C.M.R. 1993).

Having considered the matters submitted, the petitioner has failed to demonstrate that extraordinary relief is warranted.

Accordingly, it is by the Court on this 30th day of June, 2009,

ORDERED:

That Petitioner's Writ of Mandamus is hereby **DENIED**.

FOR THE COURT

OFFICIAL



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