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

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| **U N I T E D S T A T E S,** | **)** | **Misc. Dkt. No. 2012-14** |
| **Respondent** | **)** | |
| | **)** | |
| **v.** | **)** | |
| | **)** | **ORDER** |
| **Lieutenant Colonel (O-5)** | **)** | |
| **JAMES W. RICHARDS,** | **)** | |
| **USAF,** | **)** | |
| **Petitioner** | **)** | **Panel No. 2** |

On 7 January 2013, Petitioner requested this court issue a Writ of Mandamus or in the alternative a Writ of Prohibition, ordering the military judge to dismiss all charges and specifications related to his court-martial, in part based on his assertion that his right to a speedy trial was violated. In the alternative, Petitioner asks this court to issue a Writ of Mandamus ordering the military judge to suppress certain evidence, to reopen the Article 32, UCMJ, investigation, and to direct the military judge to dismiss Charge II in its entirety. Petitioner further requests this court to stay his trial during the pendency of this matter.

A writ of extraordinary relief is an extreme remedy and should be granted only in "truly extraordinary circumstances." *Rhea v. Starr*, 26 M.J. 683, 685 (A.F.C.M.R. 1988). The traditional use of the writ in aid of appellate jurisdiction has been to confine an inferior court to the lawful exercise of its specific jurisdiction or to compel it to carry out its authority when it has a duty to do so. *United States v. Mahoney*, 24 M.J. 911, 914 (A.F.C.M.R. 1987). It is clear the invocation of this extraordinary remedy to reverse a discretionary ruling of a military judge will be justified only under exceptional circumstances amounting to more than even gross error, it must amount to a judicial usurpation of power. *Id*. at 914. The party seeking mandamus relief has the burden of showing that it has a clear and indisputable right to the issuance of the writ. *Bankers Life & Casualty Co. v. Holland*, 346 U.S. 379, (1953); *Dettinger v. United States*, 7 M.J. 216 (C.M.A.1979); *Harrison v. United States*, 20 M.J. 55 (C.M.A.1985).

Applying these principles to the case before us, we find that the invocation of an extraordinary writ in the nature of mandamus is not justified. When acting on this class of petition, we are only to determine whether the military judge's ruling constituted a judicial usurpation of power or was characteristic of an erroneous practice likely to recur. We are not at liberty to substitute our judgment for that of the trial judge. Mandamus as a remedy for denial of speedy trial relief has been "limited to instances where the lower

court ignored precedent clearly on point or failed to correctly apply the rules for Courts-Martial to a clear case of government negligence." *Evans v. Kilroy*, 33 M.J. 730, 733 (A.F.C.M.R. 1991). Further, a motion to suppress evidence is an interlocutory matter for the discretion of the trial judge, rulings which fall within the category of those matters that can most appropriately be addressed at trial and during the ordinary course of appellate review. *Rhea*, 26 M.J. at 685. The military judge was authorized to rule on the matters in controversy and his rulings were not contrary to statute, settled decisional law, or valid regulation.

We find Petitioner has not established grounds which warrant extraordinary relief in this case.

Accordingly, it is by the Court on this 29th day of January, 2013,

**ORDERED:**

That the Expedited Petition for Extraordinary Relief in the Nature of Mandamus or, in the alternative, Prohibition is hereby

**DENIED**.

FOR THE COURT

OFFICIAL


LAQUITTA J. SMITH
Appellate Paralegal Specialist