UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

In Re Steven M. CHAPMAN **Airman Basic (E-1)** **U.S. Air Force** ***Petitioner***	)))))))))	**Misc. Dkt. No. 2022-05** **NOTICE OF DOCKETING** **Panel 1**

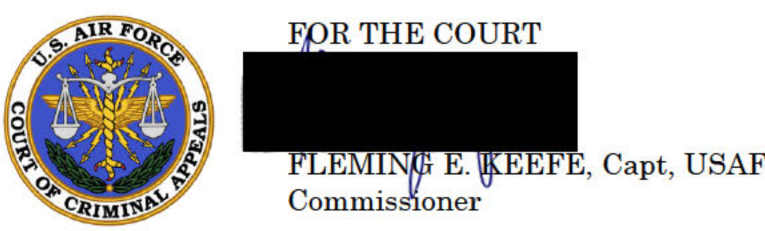
On 28 June 2022, this court received a *pro se* Petition for Extraordinary Relief in the Nature of a Writ of *Coram Nobis* in the above-styled case.

Accordingly, it is by the court on this 6th day of July, 2022,

ORDERED:

The case has been assigned Misc. Dkt. No. 2022-05 and has been referred to Panel 1 for review. No briefs will be filed unless ordered by the court.

Further, Petitioner has requested appellate defense counsel be appointed to assist with the subject petition. Petitioner is hereby notified that this court does not possess the authority under either Article 70, Uniform Code of Military Justice, 10 U.S.C. § 870, or this court's Rules of Practice and Procedure, to appoint appellate defense counsel to Petitioner. Any appointment of appellate defense counsel would be determined by The Judge Advocate General of the Air Force.



FOR THE COURT

FLEMING E. KEEFE, Capt, USAF
Commissioner

IN THE UNITED STATES AIRFORCE COURT OF CRIMINAL APPEALS

AB STEVEN M. CHAPMAN v. UNITED STATES	MOTION FOR APPOINTMENT OF APPELLATE DEFENSE COUNSEL

MOTION FOR APPOINTMENT OF APPELLATE DEFENSE COUNSEL

Petitioner Steven M. Chapman, pro se respectfully requests appointment of Appellate Defense Counsel to assist with a Writ of Error Coram Nobis before the Air Force Court of Criminal Appeals, the U.S. Court of Appeals for the Armed Forces and the Supreme Court of the United States.

Petitioner asks for this appointment pursuant to article 70(c)(1)(2) & (e) Uniform Code of Military Justice, Rule 11(b)(2), Rule 18.1 (c)(3) and Rule 20 (a)(8) Rules of Practice and Procedure.

RESPECTFULLY SUBMITTED,

14 June 2022

Steven M. Chapman

IN THE UNITED STATES AIRFORCE COURT OF CRIMINAL APPEALS

AB STEVEN M. CHAPMAN Petitioner v. UNITED STATES Respondant	PETITION FOR EXTRAORDINARY RELIEF IN THE NATURE OF A WRIT OF CORAM NOBIS TRIED AT CANNON AFB NM 88101 27th FW/ACC/8th AF 08-15 JULY 2002

TO THE HONORABLE JUDGES OF THE AIR FORCE COURT OF CRIMINAL APPEALS

Petitioner Steven M. Chapman, pro se comes before this honorable Air Force Court of Criminal Appeals (AFCCA) pursuant to the "All Writs Act" 28 U.S.C. §1651(a) AFCCA Rules of Practice and Procedure Rule 2(a)(1)(B)(b), the holdings in U.S. v. Morgan 346 US 502, U.S. v. Denedo 556 US 904 and Denedo v. U.S. 64 M.J. 114 with a Petition for Extraordinary Relief in the Nature of a Writ of Error Coram Nobis. Petitioner asks this honorable court to review the following issues:

I.

Whether Petitioner is entitled to relief using the Writ of Error Coram Nobis in light of the holdings in Denedo v. U.S. 66 M.J. (CAAF 2008) and Chapman v. U.S. 75 M.J. 598 (AFCCA 2016) though Petitioner is still in confinement.

II.

Whether the Military Judge erred when he did not sua sponte give a jury instruction in accordance with the Rule for Court Martial 916 & 920 Military Rules of Evidence 304(g), in regard to false confession as it was "in issue" at trial.

III

Whether detailed defense counsel gave ineffective assistance when they failed 1) per the military judge's ruling to, use the psychologist already assigned to the defense team to conduct the needed investigation 2) to ask the court for an Article 39(a) session to show the court that the psychologist already assigned was not qualified to conduct the needed investigation, thereby allowing defense counsel the ability to renew their motion to compel the production of an expert consultant and 3) in accordance with rule for Court-Martial 916 and 920 and Military Rules of Evidence 304(g) request a jury instruction in regard to false confession as it was " an issue" and the defense's strategy.

IV

Whether detailed appellate defense counsel gave ineffective assistance when they refused to brief the appellate court in accordance with U.S. v Grostefon 12 M.J. 431

RELIEF SOUGHT BY PETITIONER

Petitioner Steven M. Chapman pro se ask the honorable Air Force Court of Criminal Appeals (AFCCA) to grant the writ of Error Coram nobis and set aside the findings and sentence and restore all rights and privilieges to include Back Pay, promoted with his peers.

STATEMENT OF THE CASE

Steven M. Chapman, a former senior airman in the United States Air Force at Cannon AFB NM, 27th Fighter wing, Air Combat Command 8th Air Force, at a general court-martial military judge Patrick M. Rosenow, composed of officer members contrary to his pleas was convicted of premeditated attempted murder, rape, sodomy, and burglary, in violation of Articles 80, 120, 125, and 129 Uniform Code of Military Justice, 10 U.S.C. §§880, 920, 925, and 929. Sentence adjudged 15 July 2002. The convening authority approved the adjuged sentence of a dishonorable discharge, confinement for life with the possibility of parole, forfiture of all pay and allowances, and reduction to pay grade E-1. This court affirmed the finding and sentence [ACM 35564] 14 July 2006, motion granted by U.S. v. Chapman 65 M.J. 283, 2007 CAAF LEXIS 771 [CAAF 2007] Review granted by U.S. v. Chapman 65 M.J. 290, 2007 CAAF LEXIS 832 [CAAF 2007] Affirmed by U.S. v. Chapman 65 M.J. 289, 2007 CAAF LEXIS 861 [CAAF 2007] Writ of habeas corpus dismissed without prejudice U.S. v. Chapman 2012 CCA LEXIS 374 [AFCCA 2012] Petition denied by, without prejudice U.S. v. Chapman 2014 CCA LEXIS 108 [AFCCA 2014] Writ of habeus corpus denied Chapman v. U.S. 75 M.J. 598, 2016 CCA LEXIS 93 [AFCCA 2016] Writ denied by Chapman v. U.S. 2016 CCA LEXIS 351 [AFCCA 2016] Writ of habeus corpus denied Chapman v. Warden 2020 U.S. Dist. LEXIS 10456 [M.D. Fla. 2020] Writ of habeus corpus denied Chapman v. Warden 2021 U.S. App. LEXIS 36588 [11th Cir. 2021] Cert. denied Chapman v. Warden No. 21-7373 Supreme Court of the United States 2022.

Petitioner is entitled to relief using the writ of Error Coram Nobis in light of the holdings in Denedo v. U.S. 66 M.J. 114 (CAAF 2008) and Chapman v. U.S. 75 M.J. 598 (AFCCA 2016) though the Petitioner is still in confinement.

In 2016 this honorable court reviewed this Petitioner's petition as both a writ of Habeus Corpus and as a writ of Error Coram Nobis. This court denied the writ for Habeus Corpus for a lack of jurisdiction. This court denied the writ of Error Coram Nobis. This court ruled "Petitioner has failed to satisfy several threshold requirements - the failure to meet any one alone warrants a denial of Petitioner's writ." Petitioner then went to the Federal Court with a writ of Habeus Corpus. THose petitions were denied the 11th Cir. ruled, the District Court did not err in denying Chapman's §2241 petition because he failed to timely raise his ineffective assistance-claims and false-confessions-instruction claim before the military courts. See Schlesinger v. Councilman, 420 U.S. 738, 758 (1975) (explaining a federal Court will not normally entertain a Habeus petition by a military prisoner unless all available military, remedies have been exhausted) Chapman v. Warden FCC Colleman - USP11 2021 U.S. App. LEXIS 5

With the above stated, Petitioner comes before this honorable court with what may be an issue of first impression. Before the Court of Appeals for the Armed Forces ruled in Deneda-I there was no 6 factor test for Coram Nobis. In fact CAAF (then Court of Military Appeals) ruled in favor of the Petitioner in Garrett v. Lowe, 39 M.J. 293, 294 (CMA1994) a Coram Nobis writ and the Petitioner was still in confinement.

Petitioner argues that the 6 factor test in Petitioner's first petition to be too stringent and unattainable for anyone who has a life sentence such as Petitioner. In fact, the Army Court of Criminal Appeals (ACCA) ruled against Ronald Gray (which is a death penalty case). The Army Court addressed Deneda-I

and Deneda-II affect a petitioner who is serving a death sentence. The Army Court concluded that "Though Deneda-II does not mention the 6 factor test contained or adopted in Deneda-I that because the Supreme Court did not disturb the 6 factor test both decision are jointly and severely binding on the court." see Gray v. U.S. 76 M.J. 579, 587-89

Petitioner argues against the logic of the Army Court. First look at the long standing presedent of U.S. v. Morgan 346 US 502. At no time in Morgan or Deneda-II does it say that the Petitioner must have served his sentence. Petitioner sees the term served to mean 100% complete. The court in Morgan stated " The demands of the constitution, as envisioned by this court, have moved federal and state courts to acknowledge that due process requires corrective judicial process in the nature of Coram Nobis be available to expunge a void judgement when all other avenues of judicial relief are unavailable." Later the court in reference to §2255 it does not follow that congress intended to facilitate relief to federal prisoners and abolish the rights of prisoners in state custody. Clearly §2255 is only applicable to prisoners in federal custody. Logically due process requires that corrective judicial procedure in the nature of Coram Nobis be available to prisoners in state custody where in the factual situation is similar to those of the instant case. Morgan v. U.S. 346 US 502

The above stated, Petitioner has no other remedy available to him. Should this honorable court agree with ACCA, then Petitioner further argues that the Supreme Court did not disturb the 6-factor test because it was not challenged. Today Petitioner challenges it. Petitioner challenges it because Petitioner's due process rights were denied him. The Bill of Rights are for all Americans. In fact, Petitioner points this court to its 2006 opinion, "Although there is some evidence indicating that someone other than the Appellant may have committed the assault on Mrs. LJ the panel members found otherwise." If that

statement is not "reasonable doubt" what is? Petitioner's case is full of due process violation. The rules in the U.S. constitution and the Military Rules of Evidence and the rules for court-martial are suppose to help prevent an innocent man from going to prison. In Petitioner's record of trial, the court will see everything Petitioner claims to include the fact that at NO time during the trial was Mrs. LJ ever asked the most important question of all, "Is the man that attacked you in the court room today?" There was no DNA linked to the accused, no prints on the bloody knife.

Petitioner's due process rights were denied during his trial as well as on appeal, the Federal Courts will not entertain a writ of Habeus Corpus, therefore a writ of Error Corum Nobis is the only avenue Petitioner has to correct the miscarrâge of justice that has been allowed to stand for 20 years.

Petitioner will draw the court's attention to the fact that his case is similar to that of Mr. Morgan as Petitioner is currently serving an inhanced sentence. In U.S. v. Morgan, Mr. Morgan was serving a state sentence that had been inhanced due to a previous federal conviction, therefore he needed to challenge his previous erroneous conviction in order to reduce his state sentence.

Today Petitioner is not serving an Air Force sentence. He is serving a Life Without Parole sentence imposed at an Army genereal court-martial July 2012. On 09 June 2011 the U.S. Army Trial Judiciary of Fort Leavenworth Kansas gave notice under RCM 1004(b) that the Army intended to seek the death penalty. The prosecution gave notice of two aggravating factors, 1) Under RCM 1004(c)(7)(A) "for a violation of UCMJ 118(1), wa committed while the accused was serving a sentence of confinement for life with parole at the time of the murder." During the Art. 32 hearing, the prosecution droppéd the second aggravator as it was not in issue. In July 2012 pursuant to a pretrial agreement Petitioner was tried and convicted military judge alone without a capital referral. Petitioner was sentenced to Life Without Parole. As of 31 July 2012

in accordance with DOD I 1325.7-M, Air FOrce Instruction 125-30 and Army Regulation 633-30, Petitioner stopped serving his Air Force sentence and started his new enhanced Army Sentence.

Petitioner does believe he meets the 6 factor threshold requirement. 1) Petitioner's alleged errors are of the most fundamental character as his life and liberty were taken away without due process; 2) There is no other remedy available as the federal court will not entertain a Habeus Corpus until this court reviews Petitioner's issues; 3) Valid reason does ~~not~~ exist for not seeking relief earlier; Petitioner is not trained in the law, in fact he almost did not graduate High School, he had to take the ASVAB three times to make the minimum score to get into the Air Force. All through school Petitioner was in Special Education classes, therefore it was impossible for him to know what was an issue or not that is why our founding fathers gave us the right to counsel in the 6th amendment of the U.S. Constitution; 4) Again Petitioner is not trained in the law. As soon as he knew that he had an issue he has been diligent in getting his issues heard. Petitioner argues that had his attourneys given effective assistance, these issues would have been resolved in favor of the accused; 5) This writ is not seeking to have the court to evaluate any issue that was brief to it while the court had jurisdiction; 6) Petitioner is not serving his Air Force sentence.

Petitioner again challenges number 6 as there is no equal protection, as a "lifer" Petitioner will never be able to challenge his erroneous conviction as he would have to die and come back.

Wherefore Petitioner prays this honorable court will grant the relief Petitioner is seeking.

Whether the Military judge Erred when he did not Sua Sponte give a jury instruction in accordance with Rule for Court-Martial 916 and 920 and Military Rules of Evidence 304(g), in regard to false confession as it was "an issue"

at trial.

The military judge bears the "primary responsibility" for ensuring that a court-martial panel is properly instructed on the law pertaining to a case. U.S. v. Miller 57 M.J. 266, 270 (CAAF 2003). "Even though not requested, a military judge has a sua sponte duty to give certain instructions when reasonably raised by the evidence." U.S. v. McDonald 57 M.J. 18, 20 (CAAF 2002); see also U.S. v. Wolford 62 M.J. 418, 422 (CAAF 2006)

Petitioner argues that the defense trial strategy was that prosecution exhibit 1, which is a hand written statement was a product of coercive techniques implored by Air Force Office of Special Investigation (AFOSI). In fact, defense counsel asked the convening authority and the court to compel the production of an expert consultant in coercive interrogation techniques. Both the conveninggauthority and the military judge denied the motion. In fact the military judge in his 05 June 2002 ruling states: "Thus counsel are perfectly capable of determining if any coercive techniques as described in the literature are present in this case. That those techniques may have a tendency to lead to confession (both true and false) is intuitive and requires no expert assistance."

To review this issue for plain error the court would have to rule in favor of Petitioner, because it is plain and obvious that false confession was raised by the evidence. Yes, the military judge is the gate keeper on whether to admit an exhibit into evidence MRE 304, but it is the jury who is the trier of fact. Even in MRE 304(c)(4) it states that the amount and type of evidence introduced as corroboration is a factor to be considered by the trier of fact in determining the weight if any to be given to the admission or confession. By the military judge not giving an instruction to the jury on affirmative defense RCM 916(a), 918(c) and 920(a) + (e) the ability to mount a complete defense was taken away. Plus the burden of proof was shifted to the defense, thereby denying the accused his due process.

The reason this issue was not raised on direct appeal is because Petitioner is not trained in the law and therefore did not know that this was an issue. It has taken Petitioner 20 years of study to get just a fraction of understanding that a lawyer gets in 5 or 6 years of law school.

Wherefore Petitioner prays this honorable court will grant the relief sought in this Writ of Error Coram Nobis.

V

Detailed defense counsel gave ineffective assistance when they failed 1) per the military judges ruling to use the psychologist already assigned to the defense team to conduct the needed investigation 2) to ask the court for an Art. 39(a) session to show the court that the psychologist already assigned was not qualified to conduct the needed investigation, thereby allowing defense counsel the ability to renew their motion to compel the expert consultant and 3) in accordance with Rule for Court-Martial 916 and 920 and Military Rules of Evidence 304(g) request a jury instruction in regard to false confession as it was "in issue" and the defense strategy.

In the military justice system, the test to determine if an accused received effective assistance or not is a two part test found in Strickland v. Washington 466 US 668 (1984) Under the Strickland standard a defendant claiming ineffective counsel must show that counsel's actions were not supported by a reasonable strategy and that error was prejudicial.

First, Petitioner must address the holding in Petitioner's Habeus Corpus denial by the 11th Circuit Court of Appeals. The Circuit stated that Petitioner could have brought his IAC issues up on direct appeal. For the following reason Petitioner disagrees.

Petitioner argues that he is not trained in the law then or now. In fact, Petitioner was in special education classes all through school. You only need

to look in Petitioner's record of trial to see that Petitioner is telling the truth. Petitioner had to take the ASVAB 3 times just to get into the Air Force.

It was due to the education level of the accused that he needed help to understand what was going on during the interrogation conducted by AFOSI, the trial and during his appeal and even today needs the assistance of counsel. The right to counsel is rooted in the Bill of Rights because even the innocent need a lawyer. If you are poor and uneducated like Petitioner you will never be able to navigate any portion of the U.S. Justice system. That said, Petitioner did not bring these issues up sooner because he did not know what was or was not an issue. Because Congress did not give Habeus Corpus jurisdiction to the military courts thereby not allowing for a typical way to collaterally attack an erroneous conviction is not possible to allow the record to fully develop. In the federal system under 28 U.S.C. §2255, an accused can let the entire record be developed to see if the accused lawyer during trial did everything right. See Massaro v. U.S. 538 US 500. Therefore the only way Petitioner can attack his issue of Ineffective Assistance is a writ of Error Coram Nobis as it is a further step in the criminal process.

At the time of Petitioners trial he had Captains Paul R. Connolly, Kathleen V. Reder and Scott Harding detailed defense counsel. Of the three, Petitioner delt mainly with Captain Connolly as he was an Area Defense Counsel at Holloman AFB NM. It was made known to the accused and accused agreed that the defense strategy was false confession. During trial, defense counsel talked with Petitioner about getting a Dr. R[redacted] O[redacted] who was a social psychologist expert in the field of coercive police interrogation techniques and the phenomenon of false or coerced confessions. When the military judge ruled denying the defense's request, then Captain Reder asked the accused and the court to be excused for the rest of that day. Captain Reder told Petitioner that she needed the rest of that day "to get you an expert." So her and an

enlisted paralegal left. After that day, no one came to interview Petitioner nor was there another hearing to the knowlege of Petitioner ever conducted on the issue.

Petitioner argues that the next logical step was either do what the military judge said in his ruling "The court is confident that expert already appointed to provide a psychological assesment will fill that need." Appellate Exhibit LXXIV, which was to use the psychologist already assigned to do the investigation on whether the Petitioner was susceptable to coercive techniques or not or to ask the court for an Art. 39(a) session to put the defense psychologist on the stand in order to put on the record that the doctor already assigned was not qualified to 1)conduct the investigation needed and 2) be able to help ½the defense with their trial strategy and how they can address the jury about what a false confession looks like, whether due to psychological trauma of the Petitioner, if he was susceptable to coercive techniques or not and the environment in which the interrogation took place.

Because defense counsel did not take that next logical step, Petitioner was not able to provide a complete defense, therefore denying Petitioner's right to due process and the rights given under the U.S. Constitution.

Thus Petitioner prays this honorable court will grant the relief sought in this writ of Error Coram Nobis.

Detailed Appellate defense counsel gave ineffective assistance when they refused to brief the Appellate Court in accordance with U.S. v. Grostenfon 12 M.J. 431.

When you see the amount of lawyers assigned to Petitioner's case during the Appellate phase, it would shock the consious to think that there was any rock left unturned in this case. During Petitioner's direct appeal he only

dealt/spoke with Majors Terry L. McElyea, Karen L. Hecker, David P. Bennett, Anniece Barber and Captain John S. Fredland. Petitioner asserts that he ask each one of these attorneys to brief the court about the unlawful search of his mental health records in violation of the 4th amendment. Whenever Petitioner would bring this issue up, counsel would respond with there is no "per se exclusion rule" for mental health records. Petitioner does not know what a "per se exclusion rule" is, but he does know that he had a reasonable expectation of what he says to a mental health provider to be kept private.

Petitioner does agree that in an additional supplement to the petition for grant of review at CAAF. Counsel briefed that Petitioner's November 2001 statement should have been suppressed because it was not freely and voluntarily given, and the governments conduct in obtaining his privileged mental health records to use as background for questioning him about the alleged offense was sufficiently outrageous to constitute a denial of due process.

Petitioner does not feel the above issue was an adequate briefing because it did not cover the specific issue of the 4th amendment violation nor was it briefed to this honorable court. Which is most likely why CAAF did not give an opinion on that issue. To go a step further, there was more information in the additional supplement in regard to Petitioner's background, because it was not briefed to this court (which was prejudicial error). This court ruled in the following way: "because he was a Security Forces member who held law enforcement official in high esteem, and was not in a strong mental state when questioned, he was unable to resist the tactics the AFOSI agents used to obtain his confession to be unpersuasive."

Petitioner argues that had AFCCA read the record of trial and not just what was briefed, they would have had more of Petitioner's education background.

Another reason the supplemental brief to CAAF is not enough is because this honorable court needed to be briefed on how AFOSI lied to LtC. E[redacted] ROT 523-25 during a 39(a) session LtC. E[redacted] testified that AFOSI came to him to get Petitioner's mental health record. AFOSI stated that the Petitioner had been crossed trained out of Security Forces because he had put a gun to his wife's head and that the Petitioner was a strong suspect as to why he gave the okay under MRE 513(d)(6). Once they went over Petitioner's mental record, LtC. E[redacted] was told that the Petitioner in fact had not put a gun to his wife's head but his own. Later when Special Agent A[redacted] testified in the same Art. 39(a) he stated even while Airman Chapman was sitting in front of them, "we did not see him as a suspect.

Had the jury heard LtC. E[redacted]'s testimony, Petitioner believes we would not be here today.

Wherefore Petitioner prays this honorable court will grant the relief sought, granting the writ of Error Coram Nobis.

Respectfully submitted,

[redacted] 14 June 2022

Steven M Chapman

[redacted]

CERTIFICATE OF FILING AND SERVICE

Petitioner Steven M. Chapman pro se certifies that he mailed the original to Air Force Court of Criminal Appeals and a copy to the Judge Advocate General of the Air Force General of the Air Force to the below address:

HQ USAF/JA
The Judge Advocate General
1420 Air Force Pentagon
Washington, DC 20330-1420

Air Force Court of Criminal Appeals
1500 W. Perimeter Road Suite 1900
Joint Base Andrews, MD 20762

RESPECTFULLY SUBMITTED

14 June 2022

Steven M. Chapman