

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

In re Robert A. CONDON)	Misc. Dkt. No. 2022-04
Staff Sergeant (E-6))	
U.S. Air Force)	
<i>Petitioner</i>)	
)	ORDER
)	
)	
)	
)	Special Panel

This order resolves Petitioner’s 9 May 2022 request for extraordinary relief in the nature of a writ of habeas corpus under the All Writs Act, 28 U.S.C. § 1651. Petitioner, through civilian counsel, asks this court to issue a writ of habeas corpus, and order his immediate release from confinement. Specifically, Petitioner cites inadequate direct review of his case on appeal, and requests we review the following: (1) whether prosecutorial misconduct occurred in the handling of the transcript on appeal; (2) whether Petitioner’s appellate defense counsel was ineffective; (3) whether there was a *Brady v. Maryland*, 373 U.S. 83 (1963), violation through the failure to disclose the key witness’s prior criminal conviction; (4) whether the trial judge erred by assigning himself as the judge for the Petitioner’s court-martial; and (5) whether the trial judge engaged in “improper command influence.”

Petitioner’s case completed direct review on 1 October 2018 when the Supreme Court of the United States denied his petition for certiorari. *Condon v. United States*, 139 S. Ct. 110 (2018); see Article 71(c)(1)(C)(ii), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 871(c)(1)(C)(ii). On 26 April 2019, Petitioner’s case became final when the convening authority ordered the dishonorable discharge executed, having already ordered the other portions of Petitioner’s sentence executed. See Article 76, UCMJ, 10 U.S.C. § 876.*

This court does not have jurisdiction over habeas corpus petitions when there is a final judgment as to the legality of the proceedings, all portions of the sentence have been ordered executed, and the case is final under Articles 71(c)(1)(C)(ii) and 76, UCMJ. *Chapman v. United States*, 75 M.J. 598, 600–01

* The substantive law on finality did not change in Appellant’s case during the course of his appeal. See Articles 71(c)(1)(C)(ii) and 76, UCMJ (*Manual for Courts-Martial, United States* (2012 ed.)), and Articles 71(c)(1)(C)(ii) and 76, UCMJ (*Manual for Court-Martial, United States* (2016 ed.)).

(A.F. Ct. Crim. App. 2016) (citations omitted). As this court addressed in *Chapman*, habeas corpus petitions are “considered a *separate* civil case and record.” *Id.* at 601 (citation omitted). “Furthermore, the [United States] Supreme Court has stated that the federal district courts have jurisdiction over habeas corpus petitioners who are imprisoned as a result of court-martial convictions. . . . ‘By statute, Congress has charged them with the exercise of that power.’” *Id.* (citing *Burns v. Wilson*, 346 U.S. 137, 139 (1953)). Consequently, this court lacks jurisdiction to grant Petitioner’s request for extraordinary relief in the nature of a writ of habeas corpus.

Accordingly, it is by the court on this 21st day of June, 2022,

ORDERED:

The Petition for Extraordinary Relief in the Nature of a Writ of Habeas Corpus is **DENIED**.



FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court