

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

IN RE PAUL L. LEONHARDT)	Misc Dkt No. 2018-05
First Lieutenant (O-2))	
U.S. Air Force)	
<i>Petitioner</i>)	
)	
)	
)	ORDER
)	
)	Panel 2

On 11 December 2015, Petitioner was convicted by a general court-martial of one specification of sexual assault and one specification of abusive sexual contact in violation of Article 120, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920, and sentenced to a dismissal and confinement for five months. On 16 August 2017, this court set aside the findings of guilt and sentence and authorized a rehearing. *United States v. Leonhardt*, 76 M.J. 821, 829 (A.F. Ct. Crim. App. 2017). On 8 May 2018, one charge and two specifications alleging violations of Article 120, UCMJ, were preferred against Petitioner. On 17 May 2018, the Commander, 66th Air Base Group, as the special court-martial convening authority (SPCMCA), appointed a Preliminary Hearing Officer (PHO) to conduct a hearing pursuant to Article 32, UCMJ, 10 U.S.C. § 832. The hearing was initially scheduled for 12 June 2018.

On 28 March 2018, upon learning that he was to be re-prosecuted, Petitioner submitted a request for individual military defense counsel, specifically Major (Maj) MB, who served as Appellant's military appellate defense counsel during the appeal of his 2015 court-martial. That request was disapproved by the Director of the United States Air Force Judiciary, apparently on or about 17 May 2018. Petitioner, through counsel, appealed that decision to the Deputy Judge Advocate General, who denied the appeal on 25 June 2018.

In the meantime, on 30 May 2018, Petitioner through counsel requested a continuance of the Article 32, UCMJ, hearing until 23 July 2018, citing multiple reasons. On 5 June 2018, the PHO granted the request in part, delaying the hearing until 6 July 2018. On 13 June 2018, Petitioner requested reconsideration, which the PHO denied on 15 June 2018.

On 25 June 2018, the PHO indicated he intended to conduct the Article 32, UCMJ, hearing by video teleconference (VTC) and would not be present in person, in part because the SPCMCA had not funded travel for the PHO to attend in person. On 26 June 2018, Petitioner's counsel requested the SPCMCA to

direct and enable the PHO to conduct the hearing in person. On 27 June 2018, the SPCMCA denied Petitioner’s request.

On 28 June 2018, Petitioner filed a Petition for Extraordinary Relief with this court, seeking relief on three fronts. First, he requests this court stay the Article 32, UCMJ, hearing currently scheduled for 6 July 2018. Second, he requests this court order the Government to provide Maj MB as his military defense counsel. Third, he requests this court order the PHO to appear at the Article 32, UCMJ, hearing in person vice via VTC.

As an initial matter, we question whether this court has jurisdiction to intervene at this stage. The military courts of criminal appeals are courts of limited jurisdiction which “must exercise their jurisdiction in strict compliance with their authorizing statutes.” *Ctr. for Constitutional Rights v. United States*, 72 M.J. 126, 128 (C.A.A.F. 2013). Article 66, UCMJ, gives this court “jurisdiction to ‘review courts-martial cases.’” *Clinton v. Goldsmith*, 526 U.S. 529, 534 (1999) (quoting 10 U.S.C. § 866(a)). Although the All Writs Act empowers us to issue extraordinary writs “in aid of” our existing jurisdiction, the Act does not expand that jurisdiction, and at this point there is no court-martial for us to review. *Id.*; see *Bergdahl v. Burke*, Army Misc 20150624, 2015 CCA LEXIS 431, at *6 (A. Ct. Crim. App. 8 Oct. 2015) (unpub. op.) (“[I]n light of *Goldsmith*, we reject the invitation to extend the jurisdiction of this court under the All Writs Act to the pre-referral matter raised in this writ.”)

For his part, Petitioner cites no legal authority establishing our jurisdiction over the pre-referral decisions of the PHO, SPCMCA, and Maj MB’s superiors, other than the need to “prevent a miscarriage of justice.” Petitioner argues that if this court does not intervene at this stage, “if there is a referral, court-martial, and conviction, this Court will then have to address the issue on direct appeal and send the case back yet again.” However, Petitioner overlooks the critical role of the military judge, who will have the opportunity to hear Defense objections and address any errors in the Article 32, UCMJ, process in the event this matter is referred for trial.

Assuming *arguendo* that we have jurisdiction, Petitioner has failed to demonstrate his entitlement to the requested relief. Petitioner bears the burden of demonstrating that: (1) there is no other adequate means to attain relief; (2) the right to issuance of the writ is clear and indisputable; and (3) the issuance of the writ is appropriate under the circumstances. *Cheney v. United States Dist. Court*, 542 U.S. 367, 381 (2004). Petitioner fails on all three counts. As noted above, in the event this matter is referred to a court-martial, Petitioner will have the opportunity to seek redress for any prejudicial defects in the Article 32, UCMJ, hearing from the military judge. Moreover, we are not persuaded the decisions of which Petitioner complains are “clearly and indisputably” wrong. Furthermore, we are not persuaded it is otherwise appropriate

for this appellate court to exert control over the progress of this preliminary hearing.

Accordingly, it is by the court on this 29th day of June, 2018,

ORDERED:

The Petition for Extraordinary Relief dated 28 June 2018 is hereby **DE-NIED**.



FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court