

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	Misc. Dkt. No. 2009-02
Respondent	)	
	)	
v.	)	
	)	ORDER
First Lieutenant (O-2)	)	
JAMES L. MILLER,	)	
USAF,	)	
Petitioner – <i>Pro se</i>	)	Panel No. 1

On 24 March 2009, the petitioner filed a *pro se* petition for extraordinary relief in the nature of a Writ of Habeas Corpus.<sup>1</sup> The petitioner requests that this Court order a hearing in accordance with *United States v. Dubay*, 37 C.M.R. 411 (C.M.A. 1967), to examine his claim of ineffective assistance of counsel. The petitioner also requested the appointment of counsel under Article 70(c), UCMJ, 10 U.S.C § 870(c). On 1 May 2009, the government submitted its response to the petitioner’s request for a Writ of Habeas Corpus. On 18 May 2009, the petitioner submitted his reply brief in support of his petition for a Writ of Habeas Corpus and renewed his request for counsel.<sup>2</sup>

Contrary to the petitioner’s pleas, he was found guilty of one specification of attempted rape, two specifications of forcible sodomy, two specifications of assault, and two specifications of kidnapping, in violation of Articles 80, 125, 128, and 134, UCMJ, 10 U.S.C. §§ 880, 925, 928, 934. Consistent with his pleas, he was found guilty of one specification of conduct unbecoming an officer and a gentleman, in violation of Article 133, UCMJ, 10 U.S.C. § 933. The approved sentence consisted of a dismissal, confinement for 12 years, and forfeiture of all pay and allowances. On appeal, this Court affirmed the approved findings but reduced his period of confinement to 11 years 6 months for delay in the post-trial processing of his case. *United States v. Miller*, 64 M.J. 666 (A.F. Ct. Crim. App. 2007). The petitioner’s appeal to our superior court was denied

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<sup>1</sup> On 2 February 2009, the petitioner filed a *pro se* Petition for Extraordinary Relief in the Nature of a Writ of Error Coram Nobis. On 16 March 2009, the petitioner submitted a motion to withdraw his request for a Writ of Error Coram Nobis; this motion was granted on 3 April 2009.

<sup>2</sup> On 18 February 2009 and 6 April 2009, this Court notified the military justice section for The Air Force Judge Advocate General that a Petition for Extraordinary Relief in the Nature of a Writ of Error Coram Nobis and Petition for a Writ of Habeas Corpus had been filed and provided a copy of the said petition. This Court also specifically notified the military justice section that the petitioner was requesting counsel be appointed under Article 70(c), UCMJ, 10 U.S.C. § 870(c). On 2 March 2010, after it had constructively been decided not to appoint the petitioner counsel, this Court issued an order notifying the petitioner that we do not possess the authority under Article 70(c), UCMJ, to appoint appellate defense counsel and informed the petitioner that any appointment of appellate defense would have to be determined by The Judge Advocate General of the Air Force.

on 4 February 2008.<sup>3</sup> On 3 April 2008, the Secretary of the Air Force approved the sentence and ordered the dismissal to be executed. The petitioner ceased to be a member of the Air Force on 20 April 2008.<sup>4</sup>

### *Writ of Habeas Corpus Jurisdiction*

The All Writs Act authorizes “all courts established by Act of Congress [to] issue all writs necessary or appropriate in aid of their respective jurisdictions.” 28 U.S.C. § 1651(a). The Act requires two separate determinations: (1) whether the requested writ is in aid of its existing statutory jurisdiction; and (2) whether the requested writ is necessary or appropriate. *Denedo v. United States*, 66 M.J. 114, 120 (C.A.A.F. 2008) (citations omitted), *aff’d*, 129 S. Ct. 2213 (2009). A writ of habeas corpus is used to order the release of a person from confinement. *Moore v. Akins*, 30 M.J. 249, 254 (C.M.A. 1990).<sup>5</sup>

In his initial appeal to this Court, the appellant raised as an issue, pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), that his trial defense counsel were ineffective in that they did not adequately investigate his case, claiming in particular that they failed to question certain persons who might have been able to disprove one of the victims’ story and that they should have probed a news story about another abduction in the Los Angeles area similar to the one reported by his alleged victims. After carefully analyzing the appellant’s claims, this Court found that the petitioner’s trial defense counsel were not ineffective.

In the present writ of habeas corpus, the petitioner essentially reiterates his ineffective assistance of counsel claims previously addressed by this Court. He takes exception to our previous decision claiming that we reached an unreasonable determination of the facts which prevented us from fully considering his claims. However, the petitioner presents no new evidence or basis justifying his position. Furthermore, a writ of habeas corpus is not a proper substitute for an appeal. *Kaizo v. Henry*, 211 U.S. 146, 148 (1908); *Gragg v. United States*, 10 M.J. 732, 735 (N.C.M.R. 1980).

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

Accordingly, it is by the Court on this 27th day of May, 2010,

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<sup>3</sup> *United States v. Miller*, 66 M.J. 182 (C.A.A.F. 2008).

<sup>4</sup> General Court-Martial Order No. 13.

<sup>5</sup> On 23 February 2010, the petitioner was placed on Mandatory Supervised Release, which will continue until his maximum release date of 23 April 2015.

**ORDERED:**

That Petitioner's request is hereby **DENIED**.

FOR THE COURT

OFFICIAL



A handwritten signature in blue ink, appearing to read "S. Lucas", is written over the seal and extends to the right.

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