

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	Misc. Dkt. No. 2010-04
Respondent)	
)	
v.)	
)	ORDER
Technical Sergeant (E-6))	
ATHOL F. STREETE,)	
USAF,)	
Petitioner)	Special Panel

On 05 April 2010, the petitioner filed a *pro se* petition for extraordinary relief in the nature of a Writ of Habeas Corpus.¹ The petitioner, who will be entered into the Department of Defense’s Mandatory Supervised Release program (MSR), asks this Court to issue an order preventing his placement in the MSR.

The petitioner asserts the retroactive application by the United States Air Force Clemency and Parole Board and the United States Disciplinary Barracks of the current abatement credit policy incorrectly links the old abatement policy to MSR. Thus, he argues it effectively extends his confinement and violates the Ex Post Facto Clause of the United States Constitution.² The petitioner argues the current policies for determining abatement of sentences for good conduct time, earned time, or special approved abatement apply to offenses that occurred after 1 October 2004. The petitioner points out the offenses he was convicted of occurred in April 1998 and September 2004, thus, his abatement credits are governed by the old policy. He claims the old abatement credit policy was that upon release, the Minimum Release Date and the Maximum Release Date became the same date and the prisoner had no days to be under supervision. He argues MSR should not apply to him. He cites the old MSR policy as proof he is exempt from MSR. The petitioner complains that by subjecting him to MSR after his Minimum Release Date, his sentence has been increased.³

¹ The petitioner’s petition is titled “Writ of Mandamus,” but the issue raised and relief sought fall within the purview of a Writ of Habeas Corpus.

² U.S. CONST. art. IV, § 9, cl. 3.

³ The petitioner argues in the background section of his petition that he was recalled to active duty from retirement in order to be court-martialed. He argues that because of this, he may not be subject to punishment consisting of restrictions on liberty. He asserts the Department of Defense’s Mandatory Supervised Release program is a restriction on liberty. The record is clear that the petitioner was not retired. *United States v. Streete*, ACM 36757, unpub. op. at 9 n.7 (A.F. Ct. Crim. App. 02 Sep 2009). The petitioner’s case is currently under review by our superior court.

Contrary to the petitioner's pleas, a panel of officer and enlisted members sitting as a general court-martial convicted him of two specifications of rape, one specification of failure to obey a lawful order, and one specification of failure to go, in violation of Articles 120, 92, and 86, UCMJ, 10 U.S.C. §§ 920, 892, 886. The adjudged sentence consisted of a bad-conduct discharge, confinement for eight years, forfeiture of all pay and allowances, and reduction to E-1. The convening authority approved the sentence as adjudged but directed the petitioner be credited with six months of confinement for excessive post-trial delay. On appeal, this Court affirmed the approved findings and sentence. *United States v. Streete*, ACM 36757 (A.F. Ct. Crim. App. 02 Sep 2009) (unpub. op.).

Recently, the Air Force Clemency and Parole Board advised the petitioner that it was placing him on MSR. The petitioner states in his petition that his MSR release date will be on or about 12 May 2010. The petitioner makes reference to some conditions which are being imposed as part of his supervised release; however, he did not provide the notification that was served upon him or the details of the conditions that will be imposed upon his release.

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. 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).

This Court's authority is limited to reviewing proceedings with respect to the findings and sentence approved by the convening authority. *See Huschak v. Gray*, 642 F. Supp. 2d 1268, 1275 (D. Kan. 2009) (citing 10 U.S.C. §§ 866(c), 867(c)); *see also United States v. Pena*, 64 M.J. 259, 264 (C.A.A.F. 2007). We are without authority to review the general administration of the Air Force Clemency and Parole Board and its proceedings. *Pena*, 64 M.J. at 264 (citing *United States v. Towns*, 52 M.J. 830, 833 (A.F. Ct. Crim. App. 2000), *aff'd*, 55 M.J. 361 (C.A.A.F. 2001)); *see also United States v. Tate*, 64 M.J. 269 (C.A.A.F. 2007). Stated differently, we only have authority to review the Air Force Clemency and Parole Board and its proceedings as they impact the petitioner's findings and sentence. *Pena*, 64 M.J. at 264; *see also Tate*, 64 M.J. at 272.

The Air Force Clemency and Parole Board has the authority to place the petitioner on MSR. MSR is not separate punishment but rather is a parole system administered by the Air Force Clemency and Parole Board in which the petitioner is "required to serve the balance of his sentence outside of confinement on the condition that he abide by certain rules." *Huschak*, 642 F. Supp. 2d at 1276-77.

The petitioner was sentenced to eight years of confinement, and with the exception of the six months of credit awarded by the convening authority, he has no reasonable right to expect that he will serve less than the approved sentence. There is no evidence presented by the petitioner establishing his sentence has been increased. In fact, he was sentenced on 1 August 2005. We note a 12 May 2010 release date is clearly well before the confinement time approved by the convening authority. The MSR does not increase the petitioner's sentence but instead is a parole system. The issues raised by the petitioner are not issues that impact the petitioner's findings and sentence. The administration of abatement credits is not part of an adjudged sentence and is simply a collateral consequence of the petitioner's sentence. Thus, the issues raised concern the general administration of the United States Disciplinary Barracks and Air Force Clemency and Parole Board and its proceedings and, as such, these issues are beyond our review authority.

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

Accordingly, it is by the Court on this 26 day of April, 2010

ORDERED:

That Petitioner's Writ of Habeas Corpus 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