UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

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| **UNITED STATES,** **Respondent** | ) | **Misc. Dkt. No. 2009-08** |
| **v.** | ) | **ORDER** |
| **Airman First Class (E-3) WILLIAM F. WOODARD JR., USAF,** **Petitioner** | ) | **Panel No. 2** |

On 26 June 2006, the petitioner was tried by general court-martial at Pope Air Force Base, North Carolina. Pursuant to his pleas, a military judge sitting alone found the petitioner guilty of one specification of divers carnal knowledge with a child under 16 years of age, one specification of divers sodomy with a child under 16 years of age, one specification of assault consummated by a battery, and one specification of taking indecent liberties with a female under 16 years of age, in violation of Articles 120, 125, 128 and 134, UCMJ, 10 U.S.C. §§ 920, 925, 928, 934. The adjudged and approved sentence consisted of a dishonorable discharge, confinement for three years and four months, forfeiture of all pay and allowances, and a reduction to the grade of E-1.[1]

On appeal, the petitioner asserted he was denied effective assistance of counsel because his trial defense counsel failed to call live witnesses in extenuation and mitigation during the sentencing portion of his court-martial. On 29 October 2007, this Court affirmed the findings and the sentence. *United States v. Woodard*, ACM 36838 (A.F. Ct. Crim. App. 29 Oct 2007) (unpub. op.).

This case is once again before the Court, as counsel for the petitioner filed a Petition for Extraordinary Relief in the Nature of Writ of Error Coram Nobis on 18 August 2009. The petitioner, alleging false pre-trial sworn statements from one victim and false testimony by another victim at an Article 32, UCMJ, 10 U.S. C. § 832 hearing, asks the Court to set aside his conviction. We deny the petition.

*Background*

At trial, the petitioner pled guilty to engaging in oral sex and sexual intercourse with HK, his then 13-year-old sister-in-law, on several occasions. The petitioner also

[1] The petitioner and the convening authority entered into a pretrial agreement wherein the petitioner agreed to plead guilty in exchange for the convening authority's promise not to approve confinement in excess of six years.

pled guilty to unlawfully touching his penis to the vagina of his then wife, AW, and to fondling the breasts of BT, a then 12-year-old family friend. The petitioner's guilty pleas were supported by a stipulation of fact, wherein the petitioner admitted to engaging in the aforementioned misconduct, and his 9 September 2005 statement to the Air Force Office of Special Investigations (AFOSI), wherein he confessed to engaging in oral sex and sexual intercourse with HK on multiple occasions. Accordingly, the military judge found the petitioner guilty of the offenses.

The petitioner now asks this Court to set aside his conviction, contending he never assaulted AW, AFOSI agents forced him to make a false confession in his 9 September 2005 statement, and his pleas were improvident. In support of his writ, the petitioner attached: (1) a 10 March 2009 sworn statement from HK, wherein she denied ever having oral sex and sexual intercourse with the petitioner and admitted lying about the alleged incidents; (2) a 4 March 2009 sworn statement from YM, a friend of HK and AW, wherein she alleges HK and AW admitted lying about the alleged incidents; and (3) his 26 March 2009 sworn statement, wherein he: (a) denied engaging in the alleged misconduct; (b) asserted AFOSI agents twice denied him his right to an attorney and forced him to make the confession in his 9 September 2005 statement; and (c) asserted his answers during the providency inquiry and statements in the stipulation of fact were false and he only entered into the stipulation of fact because his trial defense counsel told him if he did not agree he would "go to jail for a long time or . . . for life." In essence, the petitioner challenges the providency of his pleas, the voluntariness of his 9 September 2005 confession, and the voluntariness of his consent to the stipulation of fact.

*Writ of Coram Nobis*

"The writ of coram nobis is an ancient common-law remedy designed 'to correct errors of fact.'" *United States v. Denedo*, 129 S. Ct. 2213, 2220 (2009) (quoting *United States* v. *Morgan*, 346 U.S. 502, 507 (1954)). Appellate military courts have jurisdiction over coram nobis petitions to allow consideration of allegations that an earlier conviction was flawed in a fundamental respect. *Id.* at 2224; *see also Denedo v. United States*, 66 M.J. 114, 124-25 (C.A.A.F. 2008). The writ of coram nobis is an extraordinary writ and an extraordinary remedy. *Denedo*, 129 S. Ct. at 2224. It should not be granted in the ordinary case but should be granted only under circumstances compelling such action to achieve justice. *Id.* at 2223-24; *Morgan*, 346 U.S. at 511; *Correa-Negron v. United States*, 473 F.2d 684, 685 (5th Cir. 1973).

Although a petitioner may file a writ of coram nobis at any time, to be entitled to the writ he must meet the following threshold requirements:

> (1) the alleged error is of the most fundamental character; (2) no remedy other than coram nobis is available to rectify the consequences of the error; (3) valid reasons exist for not seeking relief earlier; (4) the new information

> presented in the petition could not have been discovered through the exercise of reasonable diligence prior to the original judgment; (5) the writ does not seek to reevaluate previously considered evidence or legal issues; and (6) the sentence has been served, but the consequences of the erroneous conviction persist.

*Denedo*, 66 M.J. at 126 (citing *Morgan*, 346 U.S. at 512-13; *Loving v. United States,* 62 M.J. 235, 252-53 (C.A.A.F. 2005)).

This Court uses a two-tier approach to evaluate claims raised via a writ of coram nobis. First, the petitioner must meet the aforementioned threshold requirements for a writ of coram nobis. *See id.* If the petitioner meets the threshold requirements, his claims are then evaluated under the standards applicable to his issues. Evaluating the petitioner's case under the coram nobis threshold requirements, we find the petitioner has failed to satisfy several threshold requirements, and the failure to meet any one alone warrants a denial of the petitioner's writ.

First, the petitioner does not seek redress for a cognizable error. Having received the benefit of his pretrial agreement, he obliquely attempts to undermine the factual basis for his providency inquiry and the bargain he struck with the convening authority. If the petitioner suffered from any error, that error was caused by his alleged lies to AFOSI agents and the military judge at his court-martial. "A petitioner cannot create or exacerbate an error and then take advantage of a situation of his own making." *United States v. Raya*, 45 M.J. 251, 254 (C.A.A.F. 1996). Put simply, an invited error is not a cognizable error to be addressed by a writ of coram nobis and certainly not the type of error that compels reversal of the petitioner's conviction to achieve justice. *See United States v. Herrera*, 23 F.3d 74 (4th Cir. 1994) (upholding a lower court's denial of a petitioner's habeas corpus petition[2] under the invited error doctrine).

Second, assuming the invited error doctrine is inapplicable in this case, the petitioner is still not entitled to relief for the following reasons: (1) he fails to provide a sufficient reason for not seeking relief earlier; (2) he fails to show these alleged recantations could not have been discovered earlier through reasonable diligence;[3] (3) he seeks to reevaluate previously considered legal issues—namely, his guilt; and (4) he fails to show the consequences of his alleged erroneous conviction persist. On this latter point, the petitioner offers no evidence of how his conviction affects him and offers merely conclusory statements that consequences of his alleged erroneous conviction persist.

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[2] We realize writs of habeas corpus and writs of coram nobis are different, but they are of the same general character. *See United States v. Morgan*, 346 U.S. 502, 505 n.4 (1954).

[3] If what the petitioner now claims is true, he, more than anyone, was in the best position and had the greatest motivation to bring the victims' alleged fabrications to light at trial.

Lastly, assuming the petitioner is entitled to the grant of his writ of coram nobis, his claims are, as highlighted below, still without merit when evaluated under applicable standards. Accordingly, the petitioner is not entitled to relief.

*Providency of the Petitioner's Pleas*

We review a military judge's decision to accept a guilty plea for an abuse of discretion. *United States v. Eberle*, 44 M.J. 374, 375 (C.A.A.F. 1996) (citing *United States v. Gallegos*, 41 M.J. 446, 446 (C.A.A.F. 1995)). An accused may not plead guilty unless the plea is consistent with the actual facts of his case. *United States v. Moglia*, 3 M.J. 216, 218 (C.M.A. 1977). An accused may not simply assert his guilt; the military judge must elicit facts from the accused to support the plea of guilty. *United States v. Jordan*, 57 M.J. 236, 238 (C.A.A.F. 2002) (quoting *United States v. Davenport*, 9 M.J. 364, 367 (C.M.A. 1980)). When there is "a substantial basis in law and fact for questioning the [appellant's] plea," the plea cannot be accepted. *United States v. Hardeman*, 59 M.J. 389, 391 (C.A.A.F. 2004) (citing *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991)).

In the case at hand, sufficient evidence exists to support the military judge's findings that the petitioner committed the offenses of which he was convicted. During his providency inquiry, the petitioner admitted to committing the offenses and his pleas are amply buttressed by his 9 September 2005 confession and the stipulation of fact. In short, while the petitioner, at this late hour, may aver that he did not commit the offenses, his providency inquiry, his confession, and the stipulation of fact belie his new assertions.

*Voluntariness of the Petitioner's Confession*

"A military judge's decision to admit or exclude evidence is reviewed under an abuse of discretion standard." *United States v. Michael*, 66 M.J. 78, 80 (C.A.A.F. 2008) (quoting *United States v. McDonald*, 59 M.J. 426, 430 (C.A.A.F. 2004)). With the exception of a conditional guilty plea, a plea of guilty to an offense which results in a finding of guilty waives, inter alia, motions and objections to the voluntariness of a confession concerning the offense. Mil. R. Evid. 304(d)(5); *United States v. Dusenberry*, 49 C.M.R. 536, 539 (C.M.A. 1975); *United States v. Lopez*, 42 C.M.R. 268, 270 (C.M.A. 1970); *United States v. Hansen*, ACM 28817 (A.F. Ct. Crim. App. 21 Mar 1991) (unpub. op.). Therefore, by pleading guilty, the petitioner waived this issue.

*Voluntariness of the Petitioner's Consent to the Stipulation of Fact*

Rule for Courts-Martial (R.C.M.) 811(c) requires a military judge to "be satisfied that the parties consent to" a stipulation before accepting it in evidence. R.C.M. 811(c). "Ordinarily, before accepting any stipulation the military judge should inquire to ensure that the accused understands the right not to stipulate, understands the stipulation, and

consents to it." R.C.M. 811(c), Discussion. Concerning the stipulation of fact, the following dialogue occurred between the petitioner and the military judge:

> MJ: Airman Woodard, I have before me Prosecution Exhibit 1 for identification, a Stipulation of Fact. Did you sign this stipulation there on page 5?
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> ACC: Yes, ma'am.
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> . . . .
>
> MJ: Did you read this document thoroughly before you signed it?
>
> ACC: Yes, ma'am.
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> MJ: Airman Woodard, a stipulation of fact is an agreement among trial counsel, your defense counsel, and you that the contents of the stipulation are true, and if entered into evidence, are uncontradicted facts in this case. No one can be forced to enter into a stipulation, so you should enter into it only if you truly want to do so. Do you understand this?
>
> ACC: Yes, ma'am.
>
> MJ: Are you voluntarily entering into this stipulation because you believe it is in your best interest to do so?
>
> ACC: Yes, ma'am.
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> MJ: If I admit this stipulation into evidence it will be used in two ways. First, I will use it to determine if you are, in fact, guilty of the offenses to which you have pled guilty. Second, I will use it to determine an appropriate sentence for you. Do you understand and agree to these uses of the stipulation?
>
> ACC: Yes, ma'am.
>
> . . . .
>
> MJ: Airman Woodard, a stipulation of fact ordinarily cannot be contradicted. If it should be contradicted after I have accepted your guilty plea, I will reopen this inquiry. You should, therefore, let me know if there is anything whatsoever you disagree with or feel is untrue. Do you understand that?

ACC: Yes, ma'am.

MJ: At this time, I want you to read your copy of the stipulation silently to yourself. . . . Airman Woodard, have you finished reading the stipulation?

ACC: Yes, ma'am.

MJ: Is everything in the stipulation true?

ACC: Yes, ma'am.

MJ: Is there anything in the stipulation that you do not wish to admit is true?

ACC: No, ma'am.

MJ: Do you agree under oath that the matters contained in the stipulation are true and correct to the best of your knowledge and belief?

ACC: Yes, ma'am.

The record makes it abundantly clear that: (1) the military judge correctly conducted an inquiry with the petitioner to ensure he understood his rights regarding the stipulation of fact; (2) the petitioner understood his right not to stipulate; (3) the petitioner understood the stipulation of fact; and (4) the petitioner knowingly and voluntarily consented to the stipulation of fact. In short, his assertion that he was forced to enter into the stipulation of fact is without merit.

Accordingly, it is by the Court on this 04th day of November 2009,

**ORDERED:**

That the petitioner's Petition for Extraordinary Relief in the Nature of a Writ of Coram Nobis to set aside the conviction is hereby **DENIED**.

FOR THE COURT

OFFICIAL

CHRISTINA E. PARSONS, TSgt, USAF
Deputy, Clerk of the Court