UNITED STATES NAVY-MARINE CORPS
COURT OF CRIMINAL APPEALS
WASHINGTON, D.C.

Before
F.D. MITCHELL, J.A. MAKSYM, R.E. BEAL
Appellate Military Judges

JESSIE A. QUINTANILLA
SERGEANT (E-5), USMC

v.

UNITED STATES OF AMERICA

NMCCA 200900037
Review of Petition for Extraordinary Relief in the Nature of a Writ of Mandamus

Military Judge: CAPT Keith J. Allred, JAGC, USN.
Convening Authority: Commanding General, 3d Marine Aircraft Wing, Camp Pendleton, CA.
For Appellant: CAPT Henry Lazzaro, JAGC, USN; Maj J.E. Galvin, USMC; LCDR Stephen C. Reyes, JAGC, USN; Capt S.M. Dempsey, USMC.
For Appellee: Mr. Brian Keller, Esq.

18 May 2010

OPINION OF THE COURT

IN ACCORDANCE WITH RULE 18.2, NMCCA RULES OF PRACTICE AND PROCEDURE, THIS OPINION DOES NOT SERVE AS PRECEDENT.

PER CURIAM:

On 29 December 2009, the petitioner filed with the court a Petition for Extraordinary Relief in the Nature of a Writ of Mandamus, in which he sought to have the court overturn the ruling of the military judge at his sentencing rehearing to the effect that Life Without Parole (LWOP) is not an authorized sentence in his case. Alternatively, the petitioner requested that this court direct the military judge to grant the petitioner's motion allowing him to waive his right to clemency and parole following sentence, so that he can more easily reach a pretrial agreement with the convening authority. The court denied the Petition in an Opinion released on 30 March 2010, holding that the petitioner had failed to demonstrate that the

military judge’s rulings constitute a usurpation of power or abdication of duty and that we were convinced that the trial judge interpreted each issue correctly.

On 19 April 2010, the petitioner filed a Motion for *En Banc* Reconsideration of Petition for Extraordinary Relief in the Nature of a Writ of Mandamus. The petitioner contends that the court "did not fairly consider his petition," noting that although he asserted both the Manual for Courts-Martial and the Consitution as establishing that LWOP is an authorized punishment in his case, the court "stated that Petitioner based his claim solely on the" Manual.

The court having considered the Motion *en banc*, it was denied. However, the Panel which issued the 30 March 2010 decision has reconsidered its decision and hereby adopts its prior decision with the modifications noted below.

In the first sentence of the fifth paragraph of the section of the decision captioned "Application of the Life Without Parole Statute," insert "MCM" between the words "his" and "argument," so that the sentence reads: "The petitioner bases his MCM argument entirely on the last sentence quoted above, claiming that the President intended 'to bestow upon any service member sentenced after the effective date of the amendments the benefits of any lesser punishment he might be subject to under the amended Manual.'"

Following the section of the decision captioned "Waiver of Parole and Clemency" and before the section of the decision captioned "Conclusion," insert the following:

Petitioner’s Constitutional Arguments

The petitioner alleges that placing him into a capital sentence rehearing without the option of LWOP violates his rights under the Fifth, Sixth and Eighth Amendments. In particular, he argues that where members must choose only between life and capital punishment, they will be more likely to choose death, especially if they believe the petitioner continues to be a threat to society. He likens this to a “forced choice” that undermines the reliability of his sentence rehearing, deprives him of his right to an impartial jury and violates the equal protection clause by making it more likely that those who committed capital offenses before the creation of LWOP receive the death penalty than those who subsequently committed capital offenses.

We have reviewed the constitutional arguments of the petitioner and find them lacking based upon the record presently before us. The Supreme Court has long recognized that the death penalty is unique and “that the procedure used to impose it requires a greater degree of judicial scrutiny." *United States v. Matthews*, 16 M.J. 354, 377 (C.M.A. 1983); *see also Gilmore v.*

Taylor, 508 U.S. 333, 342 (1993). This attitude toward the death penalty has been accepted and practiced within military jurisprudence for years. *Matthews,* 16 M.J. at 377; *see also*, *United States v. Walker*, 66 M.J. 721, 732 (N.M.Ct.Crim.App. 2008). Since the 1970s, the Supreme Court has emphasized "reliability of result" in its decisions in death-penalty cases. *United States v. Murphy*, 50 M.J. 4, 14 (C.A.A.F. 1998)(citing *Gregg v. Georgia*, 428 U.S. 153 (1976), *Chambers v. Mississippi*, 410 U.S. 284 (1973), and *Furman v. Georgia*, 408 U.S. 238 (1972)). We are cognizant of the fact that reliability of result trumps all other concerns in death-penalty cases and that appellate courts must ensure that the adversarial system has functioned properly in such cases. *Murphy*, 50 M.J. at 14-15. Nevertheless, we are unpersuaded by the purely theoretical argument that a members panel deciding between two sentencing options instead of three ceases to be impartial, becomes unreliable or faces a “forced choice.” The petitioner’s constitutional arguments, while potentially ripening into legitimate avenues for appeal post-sentencing, do not justify the granting of an extraordinary writ today.

For the Court

R.H. Troidl
Clerk of Court