IN THE UNITED STATES COAST GUARD COURT OF CRIMINAL APPEALS

Bryan J. SULLIVAN Storekeeper Third Class (E-4) U.S. Coast Guard, Petitioner

v.

Karl L. SCHULTZ Vice Admiral (O-9) U.S. Coast Guard Commander, Atlantic Area,

Edward NEWBY Captain (O-6) U.S. Navy Commanding Officer, Navy Consolidated Brig Chesapeake, 21 NOVEMBER 2016

PETITION FOR EXTRAORDINARY RELIEF IN THE NATURE OF A WRIT OF HABEAS CORPUS FILED 01 NOVEMBER 2016

MISC. DOCKET NO. 001-17

ORDER – PANEL THIRTY-FIVE

Respondents

Petitioner was convicted of various offenses at court-martial, and was sentenced to confinement for seven years, reduction to E-1, forfeiture of all pay and allowances, and a dishonorable discharge. Approximately one month following the trial, the military judge declared a mistrial, on 29 September 2016. On 30 September 2016, the Government filed a notice of intent to appeal under Article 62, UCMJ.

On 1 November 2016, Petitioner filed the instant Petition.

On 14 November 2016, the Government filed the original record of trial with the Clerk of this Court. On the same date, the Government filed its Appeal under Article 62 with supporting brief, as well as its Response to the writ petition. On 17 November 2016, this Court accepted the appeal under Article 62 and docketed it with docket number 01-62-17.

On 21 November 2016, Petitioner filed a Reply.

Rule for Courts-Martial 908(b)(4) provides that the Government's notice of intent to appeal automatically stays the ruling that is the subject of the appeal, in this case the declaration of mistrial, pending disposition of the appeal. Given that the Government has perfected its appeal, we see no basis to conclude that Petitioner is entitled to relief.

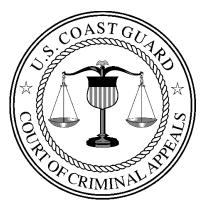
It is, by the Court, this 21st day of November, 2016,

ORDERED:

That the Petition for Extraordinary Relief is dismissed.

Bruce, J. (dissenting):

I would reject the Government appeal because the Government did not comply with Rule 21 of the Courts of Criminal Appeals Rules of Practice and Procedure, as well as on the merits. The trial judge's order declaring a mistrial should take immediate effect and the writ should be granted.



For the Court,

Sarah P. Valdes Clerk of the Court

Copy: Office of Military Justice Appellate Government Counsel Appellate Defense Counsel