

IN THE SUPREME COURT OF THE UNITED STATES

No. 18A-_____

UNITED STATES OF AMERICA, APPLICANT

v.

RICHARD D. COLLINS

APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

Pursuant to Rules 13.5 and 30.2 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully requests a 30-day extension of time, to and including July 10, 2019, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Armed Forces (CAAF) in this case. The court of appeals entered its judgment on March 12, 2019. Unless extended, the time within which to file a petition for a writ of certiorari will expire on June 10, 2019. The jurisdiction of this Court would be invoked under 28 U.S.C. 1259(2). A copy of the CAAF's order is attached. See App., infra, 1a.

1. In 2017, respondent was convicted by court-martial of raping a fellow Air Force service member in 2000. 78 M.J. 530,

531-532. On appeal, respondent contended that his prosecution was barred by the statute of limitations. Id. at 531.

At the time of respondent's offense, the applicable statute of limitations stated that "any offense punishable by death * * * may be tried and punished at any time without limitation," 10 U.S.C. 843(a) (2000), and the Uniform Code of Military Justice (UCMJ) stated that rape was punishable by death, 10 U.S.C. 920(a) (2000). At the time of both the offense and trial in this case, binding CAAF precedent held that those provisions allowed rape to be prosecuted without a statute of limitations. See United States v. Stebbins, 61 M.J. 366, 369 (2005); Willenbring v. Neurauter, 48 M.J. 152, 178-180 (1998). In 2018, however, the CAAF overruled those decisions in United States v. Mangahas, 77 M.J. 220, 222, adopting the view that rape was not "punishable by death" for purposes of former Section 843(a) because this Court had held in Coker v. Georgia, 433 U.S. 584 (1977), that imposing the death penalty for rape of an adult woman in the civilian criminal justice system violates the Eighth Amendment. 77 M.J. at 223-224. Mangahas determined that the UCMJ's default five-year limitations period, rather than former Section 843(a), applied to the rape offense at issue there. Id. at 222, 225; see 10 U.S.C. 843(b) (1) (1994).

In this case, the Air Force Court of Criminal Appeals (AFCCA) followed the controlling precedent in Mangahas and concluded that respondent's 2017 prosecution for a rape committed in 2000 was

time barred. See 78 M.J. at 534. The AFCCA rejected the government's contention that the prosecution was timely because Congress in 2006 amended the UCMJ to provide that "rape * * * may be tried and punished at any time without limitation." 10 U.S.C. 843(a) (2006). In the AFCCA's view, reading the 2006 amendment to permit the prosecution would constitute an impermissible retroactive application of federal law. See 78 M.J. at 536-537.

The CAAF adopted the same position on the amendment of Section 843(a) in United States v. Briggs, 78 M.J. 289, 292-295 (2019), and the CAAF then summarily affirmed in this case on the basis of its decision in Briggs, see App., infra, 1a.

2. On May 10, 2019, the government filed an application for a 30-day extension of time within which to file a petition for a writ of certiorari in United States v. Briggs, No. 18A1168. The Chief Justice granted that application on May 14, 2019. The government seeks a corresponding extension of time in this case. The Solicitor General has not yet determined whether to file a petition for a writ of certiorari in this case or Briggs. The additional time sought in this application is needed to continue consultation within the government and to assess the legal and practical effects of the court of appeals' ruling. Additional time is also needed, if a petition for a writ of certiorari is authorized, to permit its preparation and printing.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

MAY 2019

--- M.J. ----, 2019 WL 1581470 (U.S. Armed Forces)
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U.S.
v.
Richard D. COLLINS

No. 19-0052/AF
March 12, 2019

CCA 39296

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Appeals — Summary Disposition

*1 On consideration of the three issues certified by the Judge Advocate General of the Air Force, 78 M.J. 190 (C.A.A.F. 2018), the briefs of the parties, and Appellee's motion to summarily affirm filed on February 26, 2019, and in light United States v. Briggs, — M.J. — (C.A.A.F. Feb. 22, 2019), it is ordered that the three certified issues are answered in the negative, and the decision of the United States Air Force Court of Criminal Appeals is therefore affirmed. Appellee's motion is denied as moot.