

No. _____

In The
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2020

STEVEN E. HILL, *Petitioner,*

v.

C. V. RIVERA, Warden, *Respondent.*

Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Eighth Circuit

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QUESTIONS PRESENTED FOR REVIEW

1. Whether this Court's decision in *United States v. Briggs* 592 U.S. ____ , 141 S. Ct. 467 (December 10, 2020) should be reconsidered in light of the status of military tribunals as Article I courts of special limited jurisdiction.

LIST OF PARTIES TO PROCEEDING

All parties appear in the caption of the case on the cover page.

LIST OF DIRECTLY RELATED PROCEEDINGS

1. Court: Department of the Army, General Court Martial
Case Number: N/A
Case Caption: Sgt. Steven Hill, 420-94-6131, A CO, 703rd BSB, 41BCT, 3ID, Fort Stewart, GA, 31314
Date of Judgment: October 25, 2012
2. Court: United States Army Court of Criminal Appeals
Case Number: Army 20120979
Case Caption: United States v. Steven E. Hill
Date of Judgment: June 29, 2015
3. Court: United States Court of Appeals for the Armed Forces
Case Number: 15-0734/AR
Case Caption: United States v. Hill
Date of Judgment: November 2, 2015
Reconsideration Denied February 17, 2016
Supplemental Rule 20 Review Dismissed w/o Prejudice April 1, 2019
4. Court: United States District Court for the Eastern District of Arkansas
Case Number: 2:17-cv-00003-JLH
Case Caption: Steven E. Hill v. C.V. Rivera, Warden
Date of Judgment: May 10, 2017
Judgment on Remand November 27, 2018
5. Court: United States Court of Appeals for the Eighth Circuit
Case Number: 17-2363
Case Caption: Steven Hill v. C.V. Rivera
Date of Judgment: May 29, 2018
6. Court: United States Court of Appeals for the Eighth Circuit
Case Number: 18-3756
Case Caption: Steven Hill v. C.V. Rivera
Date of Judgment: December 23, 2020

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**CITATIONS TO OFFICIAL AND UNOFFICIAL REPORTS OF
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United States v. Hill. 75 M.J. 107. 2015 CMF LEXIS 960 (C.A.A.F.. Nov. 2. 2015)

United States v. Steven E. Hill, 2015 CAAF LEXIS 960; 75 M.J. 107

United States v. Hill, 2016 CAAF LEXIS 146 (C.A.A.F.. Feb. 17,2016)

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Hill v. Rivera, 724 Fed. App'x 511, at 512 (8th Cir. 2018) (per curiam).

In The
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2020

STEVEN E. HILL, *Petitioner*,

v.

C.V. RIVERA, *Respondent*.

Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Eighth Circuit

STEVEN E. HILL respectfully petitions for a Writ of Certiorari to review the Judgment of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The United States Court of Appeals for the Eighth Circuit rendered its opinion in this matter in *Hill v. Rivera*, Case No. 18-3756, ___ F.3d ___ (December 23, 2020). Appendix B. The court’s judgment was entered December 23, 2020, and is attached as Appendix A. The Court of Appeals for the Eighth Circuit reviewed Mr. Hill’s first appeal in this matter in case no. 17-2363, *Hill v. Rivera*, 724 Fed. App’x 511, at 512 (8th Cir. 2018) (per

curiam)(unpublished), and entered its order and judgment vacating the District Court's Order in part and remanding for further consideration on May 29, 2018.

JURISDICTION

The final judgment of the United States Court of Appeals for the Eighth Circuit on petitioner's appeal from the Circuit Court's denial of his petition under 28 U.S.C. 2241¹ was rendered December 23, 2020. Appendix B. Pursuant to United States Supreme Court Rule 13(1) this petition is timely filed on March 23, 2021 within 90 days after entry of the judgment denying petitioner's appeal. This Court's jurisdiction is invoked pursuant to 28 U.S.C. Section 1254(1).

¹ Because Mr. Hill's conviction was imposed under the uniform code of military justice, his avenue of relief lies under 28 U.S.C. Section 2241, and no certificate of appealability was required. *Witham v. U.S.*, 355 F.3d 501 (6th Cir., 2004); citing *Clinton v. Goldsmith*, 526 U.S. 529, 537 n. 11, 119 S.Ct. 1538, 143 L.Ed.2d 720; *Langella v. Anderson*, 612 F.3d 938 (8th Cir., 2010).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. CONST. ARTICLE I, SECTION 8, CLAUSES 11-14

The Congress shall have power *** ; To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water. To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years. To provide and maintain a Navy. To make Rules for the Government and Regulation of the land and naval Forces.

U.S. CONST. ARTICLE III, SECTIONS 1 AND 2

Section I.

The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section 2.

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

28 U.S.C. Section 2241

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

(b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.

(c) The writ of habeas corpus shall not extend to a prisoner unless—

(1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or

(2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or

(3) He is in custody in violation of the Constitution or laws or treaties of the United States; or

(4) He, being a citizen of a foreign state and domiciled therein is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, or under color thereof, the validity and effect of which depend upon the law of nations; or

(5) It is necessary to bring him into court to testify or for trial.

(d) Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such an application is filed in the exercise of its discretion

and in furtherance of justice may transfer the application to the other district court for hearing and determination.

(e)(1) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

(2) Except as provided in paragraphs (2) and (3) of section 1005(e) of the Detainee Treatment Act of 2005 (10 U.S.C. 801 note), no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination...

UNIFORM CODE OF MILITARY JUSTICE PROVISIONS

10 U.S.C. § 843 – Art. 43 Statute of Limitations

[Attached as Appendix D]

10 U.S.C. § 817 – Art. 43 Jurisdiction of courts-martial in general

(a) Each armed force has court-martial jurisdiction over all persons subject to this chapter. The exercise of jurisdiction by one armed force over personnel of another armed force shall be in accordance with regulations prescribed by the President.

(b) In all cases, departmental review after that by the officer with authority to convene a general court-martial for the command which held the trial, where that review is required under this chapter, shall be carried out by the department that includes the armed force of which the accused is a member.

STATEMENT OF THE CASE

A. Jurisdictional Facts

This petition is brought off of appeal from denial of Petitioner's petition for habeas corpus pursuant to 28 U.S.C. 2241. Petitioner is a federal prisoner transferred to federal custody after conviction and sentence by a general court martial under the Uniform Code of Military Justice entered October 25, 2012. Appendix C. Petitioner originally filed his petition for habeas corpus in the United States District Court for the Eastern District of Arkansas on January 9, 2017. His petition was denied by the District Court on May 10, 2017, and Petitioner appealed to the United States Court of Appeals for the Eighth Circuit. The Court of Appeals remanded Petitioner's case to the District Court on May 29, 2018 for reconsideration, holding that, "To the extent Hill asserted an argument based on the applicable statute of limitations, the judgment [was] vacated and the matter [was] remanded for the parties and the district court to reconsider this case in light of *United States v. Mangahas*, 77 M.J. 220 (C.A.A.F. 2018)."

The District Court entered its judgment denying petitioner's petition for habeas corpus on remand on November 27, 2018, finding, *inter alia*, that the statute of limitations rulings of *Mangahas* were "not a watershed procedural rule that applies retroactively." Mr. Hill appealed to the Court of Appeals for the Eighth Circuit, and his appeal was denied on December 23, 2020, based on this

Courts decision in *United States v. Briggs*, 592 U.S. ____; 141 S. Ct. 467, 2020 WL 7250099 (2020), without reaching any issue relating to whether Mr. Hill's claims could be properly brought under 28 U.S.C. Section 2241.

B. MR. HILL'S CONVICTION

On October 24 and 25, 2012, Sergeant Steven E. Hill was tried by General Court Martial at Fort Stewart, Georgia. He was found guilty of one charge of rape, one charge of sexual harassment of a subordinate soldier and two charges of wrongful sexual contact, for which he was sentenced "To be reduced to the grade of Private (E-1); to forfeiture of all pay and allowances; to be confined for 20 years; [and] to be discharged with a Dishonorable Discharge." The Convening Authority, Commanding General John M. Murray, ordered the sentence to be executed "except for that part of the sentence extending to a Dishonorable Discharge." The United States Court of Appeals for the Armed Forces denied his petition for review on November 2, 2015 and denied his petition for reconsideration on February 17, 2016.

Mr. Hill's convictions for wrongful sexual contact were based on events from January 2011, and his conviction for sexual harassment was based on events from September 1 and December 31, 2010. The rape conviction was from events occurring in June 1, 1998 and July 31, 1998. Mr. Hill's Court

Martial convened on October 24, 2012, so the holding in *Mangahas* would be applicable to his rape conviction if still in effect.

REASONS FOR GRANTING THE WRIT

I. ***Briggs* did not address the impact of this Court’s line of cases relating to the limited jurisdiction of Article I military tribunals. Under that line of cases, limitations statutes should be strictly construed, rather than construed on an equal playing field. Under these circumstances, Petitioner submits that the Court of Appeals decision is in conflict with Constitutional principles of interpretation relating to Article I courts.**

A military court is a statutory creation, vested with special and limited jurisdiction. *Runkle v. United States*, 122 U.S. 543, 555, 22 Ct.Cl. 487, 7 S.Ct. 1141, 30 L.Ed. 1167 (1887). As a result, a court-martial proceeding must be convened and constituted in conformity with the applicable statutes, specifically the UCMJ; otherwise the military court lacks jurisdiction. *See McClaghry v. Deming*, 186 U.S. 49, 62, 22 S.Ct. 786, 46 L.Ed. 1049 (1902).

This Court’s decision in *United States v. Briggs*, 592 U.S. ____; 141 S. Ct. 467, 2020 WL 7250099 (2020) interpreted the statute of limitations exception of 10 U. S. C. §843(a) which provides that a military offense, “punishable by death, may be tried and punished at any time without limitation.” In interpreting this provision, this Court found that the Government’s argument that the term “punishable” was a term of art was the “more persuasive” interpretation of the statute. This Court noted in its evaluation of the limitation provision that, “the

[Uniform Code of Military Justice] UCMJ establishes the jurisdiction of general courts-martial ‘to try persons subject to this chapter for any offense made punishable by this chapter.’” No party to the *Briggs* proceeding appears to have pursued the issue of military court jurisdiction past this determination. Absent any such argument the Court evaluated the statute of limitations in question in terms of general principles of statutory interpretation without restriction. In support of the determination that the statute of limitations exception in question should be interpreted to encompass any offense for which death was provided as a possible penalty under the terms of the UCMJ, this Court found that, “[w]e . . . should not lightly assume that Congress tied the meaning of the statutes of limitations in Article 43 to the Eighth Amendment.” *Briggs slip. op.* at 8. Additionally, the *Briggs* opinion held that, “[o]ther things being equal, certainty in statutes of limitations generally serves the interests of all concerned, and that is certainly true with respect to the statute of limitations for rape.” *Briggs slip. op.* at 5.

It is respectfully submitted that, as presented, these determinations were made in a context in which all things were in fact, “being equal.” The issue that does not appear to have been presented in *Briggs*, however, is the effect of the nature of military tribunals. The UCMJ does not simply “establish the general jurisdiction of military court’s martial. It establishes a jurisdiction which, because of its source, must be strictly construed.

Runkle v. U.S., 122 U.S. 543, *supra.*, described the nature of Court Martial jurisdiction as follows:

A court-martial organized under the law of the United States is **a court of special and limited jurisdiction**. It is called into existence for a special purpose, and to perform a particular duty. When the object of its creation has been accomplished it is dissolved. 3 Greenl. Ev. § 470; *Brooks v. Adams*, 11 Pick. 442; *Mills v. Martin*, *supra*; *Duffield v. Smith*, 3 Serg. & R. 590, 599. Such, also, is the effect of the decision of this court in *Wise v. Withers*, 3 Cranch, 331, which, according to the interpretation given it by Chief Justice MARSHALL in *Ex parte Watkins*, 3 Pet. 193, 207, ranked a court-martial as 'one of those inferior courts of limited jurisdiction whose judgments may be questioned collaterally.' To give effect to its sentences, it must appear affirmatively and unequivocally that the court was legally constituted; that it had jurisdiction; **that all the statutory regulations governing its proceedings had been complied with**; and that its sentence was conformable to law. *Dynes v. Hoover*, 20 How. 65, 80; *Mills v. Martin*, 19 Johns. 33. **There are no presumptions in its favor so far as these matters are concerned**. As to them, the rule announced by Chief Justice MARSHALL in *Brown v. Keen*, 8 Pet. 112, 115, in respect to averments of jurisdiction in the courts of the United States, applies. His language is: 'The decisions of this court require that averment of jurisdiction shall be positive; that the declaration shall state expressly the facts on which jurisdiction depends. It is not sufficient that jurisdiction may be inferred argumentatively from its averments.' All this is equally true of the proceedings of courts-martial. **Their authority is statutory, and the statute under which they proceed must be followed throughout.**

United States v. Runkle, 122 U.S. at 555-556 [emphasis added]. In *United States v. Denedo*, 129 S.Ct. 2213, 173 L.Ed.2d 1235, 556 U.S. 904 (2009), the Court clearly stated that the limited jurisdictional grant to Article I courts such as the CAAF must be more strictly construed than a grant to Article III Courts, holding that,

Assuming no constraints or limitations grounded in the Constitution are implicated, it is for Congress to determine the subject-matter jurisdiction of federal courts. *Bowles v. Russell*, 551 U.S. 205, 212, 127 S.Ct. 2360, 168

L.Ed.2d 96 (2007) (“Within constitutional bounds, Congress decides what cases the federal courts have jurisdiction to consider”). **This rule applies with added force to Article I tribunals**, such as the NMCCA and CAAF, which owe their existence to Congress' authority to enact legislation pursuant to Art. I, § 8 of the Constitution.

Denedo, 129 U.S. at 912, [emphasis added]; citing *Clinton v. Goldsmith*, 526 U.S. 529, 119 S.Ct. 1538, 143 L.Ed.2d 720 (1999). In *Goldsmith* the Court expressly denied expansion of CAAF authority past express statutory authorization, and rejected a proposed theory that, “Congress intended [the CAAF] to have broad responsibility with respect to administration of military justice.” *Clinton v. Goldsmith*, 526 U.S. 529, 534 (1999).

Respectfully, the Article I nature of military tribunals militates against at the three *Briggs* conclusions. All things are not equal in an interpretive paradigm in which, per *Denedo*, any grant of jurisdiction must be bounded “with added force.”

In application, more strict construction would result in a different analysis than that in *Briggs*. Petitioner submits that clear language in the Uniform Code of Military Justice (UCMJ) establishes that the statute of limitations set out therein is an absolute bar to prosecution and therefore jurisdictional. If stricter construction is applied, the UMCJ limitations period found in Article 43 (10 U.S.C. § 843) involves necessary consideration of the UMCJ's relevant jurisdictional statute in Article 17 (10 U.S.C. § 817). Article 43 provides in relevant part that:

(1) Except as otherwise provided in this section (article), a person charged with an offense is not liable to be tried by court-martial if the offense was

committed more than five years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

Unlike, for instance, the general jurisdictional grant found in 18 U.S.C. § 3231, Article 17 says the following:

(a) Each armed force has court-martial jurisdiction over **all persons subject to this chapter**. The exercise of jurisdiction by one armed force over personnel of another armed force shall be in accordance with regulations prescribed by the President.

[emphasis added]. The language of Article 43 states that past the five-year limitation period no person is “liable to be tried by court-martial.” In other words, past the five-year limitation period, they are not “subject to this chapter.”

This interpretation is borne out by the legislative discussion of the original statute of limitations period established in the 1950 UMCJ. (Public Law 81-506). Unlike civil limitations periods, there was an express determination to eliminate equitable tolling and extensions of the UMCJ’s limitations provisions. In Senate. Rep No. 481-486 (1950) at 19 (Mr. Kefauver – Committee on Armed Services), the summary relating to Article 43(b) stated that,

The time when the period of limitations will stop running is changed from the time of arraignment to the time sworn charges and specifications are received by an officer exercising summary court-martial jurisdiction over the command. This provision is considered preferable to the more indefinite provision in AW 39 that the statute is tolled when “by reason of some manifest impediment the accused shall not have been amenable to military justice.

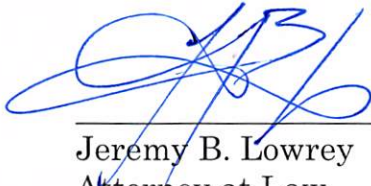
The implication is that Congress intended the limitations period to be absolute except for specified and clearly delineated exceptions. In other words, the limitations provision should be narrowly construed as an exception, rather than as a broad free-standing grant of jurisdiction.

CONCLUSION AND REQUEST FOR RELIEF

Petitioner respectfully submits that although this Court determined in *Briggs* that the exception to the statute of limitations under the UCMJ for rape continues to apply, interpreting rape to be an offense “punishable by death” under the provisions of the UCMJ, application of the jurisdictional limitations recognized in *Goldsmith* would require a narrower interpretation of the statute of limitations language interpreted in *Briggs*. The court should grant certiorari to consider whether the status of the military tribunal as an Article I body, rather than a court of general jurisdiction under Article III requires reconsideration of *Briggs*, and consideration of the statute of limitations in question as an exception, rather than a grant, of jurisdiction.

WHEREFORE AND FOR THE REASONS STATED ABOVE, Petitioner respectfully prays that a writ for certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit.

Dated this 21st day of May, 2021.



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United States Court of Appeals
For the Eighth Circuit

No. 18-3756

Steven E. Hill

Plaintiff - Appellant

v.

C V Rivera, Warden

Defendant - Appellee

Appeal from United States District Court
for the Eastern District of Arkansas - Helena

Submitted: September 27, 2019

Filed: December 23, 2020

Before GRUENDER, BENTON, and SHEPHERD, Circuit Judges.

BENTON, Circuit Judge.

The district court¹ dismissed Steven E. Hill's habeas corpus petition under 28 U.S.C. § 2241. *See Hill v. Rivera*, 2018 WL 6182637, at *4 (E.D. Ark. Nov. 27, 2018). He appeals. Having jurisdiction under 28 U.S.C. § 1291, this court affirms.

¹The Honorable J. Leon Holmes, United States District Judge for the Eastern District of Arkansas, now retired.

In 2012, Hill, then a Sergeant in the United States Army, was convicted after trial by general court-martial of a rape committed in 1998. At the time of his conviction and direct appeals, there was no statute of limitations for prosecution of rape under the Uniform Code of Military Justice (UCMJ). *See, e.g., United States v. Stebbins*, 61 M.J. 366, 369 (C.A.A.F. 2005); *Willenbring v. Neurauter*, 48 M.J. 152, 180 (C.A.A.F. 1998). In 2018, the Court of Appeals for the Armed Forces held for the first time that a five-year statute of limitations applied to rape. *See United States v. Mangahas*, 77 M.J. 220, 222-24 (C.A.A.F. 2018).

Hill appealed to this court, arguing the new five-year statute of limitations applied retroactively to invalidate his conviction. *See Hill v. Rivera*, 724 Fed. Appx. 511, 511-12 (8th Cir. 2018). This court remanded to the district court to consider the applicable statute of limitations in light of *Mangahas*. *Id.* at 512. The district court dismissed the habeas petition, ruling *Mangahas* inapplicable. *Hill*, 2018 WL 6182637, at *1. Hill again appeals.

This month, in *United States v. Briggs*, the United States Supreme Court abrogated *Mangahas*, thus voiding the premise of Hill's appeal. *See United States v. Briggs*, 2020 WL 7250099, at *2 (U.S. Dec. 10, 2020) (holding there is no statute of limitations under the UCMJ for rapes committed between 1986 and 2006).

Hill's conviction was not untimely.

* * * * *

The judgment is affirmed.

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 18-3756

Steven E. Hill

Plaintiff - Appellant

v.

C V Rivera, Warden

Defendant - Appellee

Appeal from U.S. District Court for the Eastern District of Arkansas - Helena
(2:17-cv-00003-JLH)

JUDGMENT

Before GRUENDER, BENTON, and SHEPHERD, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

December 23, 2020

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX B

APP 3

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

STEVEN E. HILL
REG #17672-035

PETITIONER

v.

No. 2:17CV00003-JLH

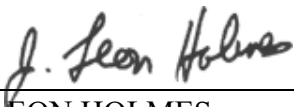
C.V. RIVERA, Warden

RESPONDENT

JUDGMENT

Pursuant to the Opinion and Order entered separately today, the habeas petition of Steven E. Hill is dismissed with prejudice.

IT IS SO ORDERED this 27th day of November, 2018.



J. LEON HOLMES
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

STEVEN E. HILL
REG #17672-035

PETITIONER

v.

No. 2:17CV00003-JLH

C.V. RIVERA, Warden

RESPONDENT

OPINION AND ORDER

The Eighth Circuit has directed this Court to reconsider the part of Steven E. Hill’s habeas petition addressing the statute of limitations, to the extent he raised that issue, in light of *United States v. Mangahas*, 77 M.J. 220 (C.A.A.F. 2018). United States Magistrate Judge Joe J. Volpe has recommended that Hill’s habeas petition be dismissed. Upon *de novo* review, that recommendation is adopted with the following additional comments.

In *Mangahas*, the Court of Appeals for the Armed Forces held that the crime of rape, under military law, was not “punishable by death” at the time of the offense, and so the five-year statute of limitations applied to it. *Mangahas* overturned a prior C.A.A.F. case holding rape was “punishable by death” and therefore exempt from the five-year statute of limitations, *Willenbring v. Neurauter*, 48 M.J. 152 (C.A.A.F. 1998). Decades before, the Supreme Court had held the death penalty unconstitutional for rape. *Coker v. Georgia*, 433 U.S. 584, 598, 97 S. Ct. 2861, 2869, 53 L. Ed. 2d 982 (1977). Thus, the *Mangahas* decision overturning *Willenbring* was based on *Coker*. *Mangahas* therefore changed the landscape within the C.A.A.F. regarding the statute of limitations for rape under military law.

As Judge Volpe noted, the issue arises because Hill was convicted in 2012 of rape that occurred in 1998. The record before us does not show whether Hill asserted a statute-of-limitations defense in the underlying criminal proceeding, but since the Eighth Circuit has directed us to

consider the issue, we will assume that he did so and that his statute-of-limitations defense was overruled based on *Willenbring*. The question is whether Hill can obtain habeas relief based on *Mangahas*.

If the rule announced in *Mangahas* is new and retroactive, then the fact that it is new does not preclude Hill from asserting the statute-of-limitations argument in his habeas petition. If the *Mangahas* rule is new and not retroactive, then his petition must be dismissed, as it is the only remaining issue. If the rule in *Mangahas* is not new, then Hill is not precluded from raising the statute of limitations issue on that basis.

New Rules

In general, new rules do not apply retroactively in cases on collateral review. *Butler v. McKellar*, 494 U.S. 407, 412, 110 S. Ct. 1212, 1216, 108 L. Ed. 2d 347 (1990); *Teague v. Lane*, 489 U.S. 288, 310, 109 S. Ct. 1060, 1075, 103 L. Ed. 2d 334 (1989). “The ‘new rule’ principle . . . validates reasonable, good-faith interpretations of existing precedents made by state courts even though they are shown to be contrary to later decisions.” *Butler*, 494 U.S. at 414, 110 S. Ct. at 1217.

When is a rule “new” for purposes of cases on collateral review? A court must ascertain the “legal landscape as it existed” at the time the conviction became final and ask whether the Constitution, as interpreted by the precedent then existing, compels the later-announced rule. *See Beard v. Banks*, 542 U.S. 406, 411, 124 S. Ct. 2504, 2510, 159 L. Ed. 2d 494 (2004). “That is, the court must decide whether the rule is actually ‘new.’” *Id.* “[A] decision announces a new rule ‘if the result was not *dictated* by precedent existing at the time the defendant’s conviction became final.’” *Butler*, 494 U.S. at 412, 110 S. Ct. at 1216 (quoting *Penry v. Lynaugh*, 492 U.S. 302, 314, 109 S. Ct. 2934, 2944, 106 L. Ed. 2d 256 (1989)). “A new decision that explicitly overrules an earlier holding obviously ‘breaks new ground’ or ‘imposes a new obligation’” and is thus new. *Id.*;

see also Saffle v. Parks, 494 U.S. 484, 488, 110 S. Ct. 1257, 1260, 108 L. Ed. 2d 415 (1990) (“The explicit overruling of an earlier holding no doubt creates a new rule.”). The question is more difficult, though, when a “new decision is reached by an extension of the reasoning of previous cases.” *Butler*, 494 U.S. at 412-13, 110 S. Ct. at 1216. A court’s observation that its decision “is ‘controlled’ by a prior decision” does not mean the rule is not new, as “[c]ourts frequently view their decisions as being ‘controlled’ or ‘governed’ by prior opinions even when aware of reasonable contrary conclusions reached by other courts.” *Id.* at 415, 110 S. Ct. at 1217. If the outcome of a new decision “was susceptible to debate among reasonable minds,” which might be evinced by different results in various courts that had considered the question previously, then it is almost certainly a “new” rule for purposes of the *Teague* analysis. *Id.* *See also Beard*, 542 U.S. at 413, 124 S. Ct. at 2511 (explaining that a rule is not new if the unlawfulness of the conviction was “apparent to all reasonable jurists” by then-existing precedent).

New Rules that Apply Retroactively

Even if a rule is new, there are two exceptions to nonretroactivity on collateral review: substantive rules and a very small set of procedural rules.

First, new substantive rules generally apply retroactively on collateral review. *Schriro v. Summerlin*, 542 U.S. 348, 351 n.4, 124 S. Ct. 2519, 2522 n.4, 159 L. Ed. 2d 442 (2004). Substantive rules include those that “place[] a class of private conduct beyond the power of the State to proscribe.” *Saffle*, 494 U.S. at 494, 108 S. Ct. at 1263. Substantive rules also include those that “prohibit[] a certain category of punishment for a class of defendants because of their status or offense.” *Id.* Thus, in sum, a rule that “alters the range of conduct or the class of persons that the law punishes” is substantive, applies retroactively and may be raised in a habeas petition. *See Schriro*, 542 U.S. at 353, 124 S. Ct. at 2523.

In contrast to substantive rules, new procedural rules generally do not apply retroactively on collateral review. *Id.* at 352, 124 S. Ct. at 2523. Rules that regulate the “*manner of determining* the defendant’s culpability are procedural.” *Id.* at 353, 124 S. Ct. at 2523.

The second set of new rules that do, nevertheless, apply retroactively is a minute set of procedural rules: “watershed rules of criminal procedure,” which implicate the fundamental fairness and accuracy of the criminal proceeding. *See Saffle*, 494 U.S. at 495, 110 S. Ct. at 1264 (citing *Teague*, 489 U.S. at 311, 109 S. Ct. at 1076). These are new procedural rules the violation of which would seriously diminish the likelihood of obtaining an accurate conviction. *Butler*, 494 U.S. at 416, 110 S. Ct. at 1218. The Supreme Court has identified a two-part test for such watershed rules: “First, the rule must be necessary to prevent an impermissibly large risk of an inaccurate conviction. . . . Second, the rule must alter our understanding of the bedrock procedural elements essential to the fairness of a proceeding.” *Whorton v. Bockting*, 549 U.S. 406, 418, 127 S. Ct. 1173, 1182, 167 L. Ed. 2d 1 (2007) (citations and quotations omitted). The Supreme Court has admitted that “the precise contours of this exception [are] difficult to discern,” but has said that the rule of *Gideon v. Wainwright*, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963), that a defendant has the right to a lawyer in criminal trials for serious offenses, might be such a watershed rule. *Saffle*, 494 U.S. at 495, 110 S. Ct. at 1264. Even so, the Supreme Court has “rejected every claim that a new rule satisfied the requirements for watershed status.” *Whorton*, 549 U.S. at 418, 127 S. Ct. at 1182.

Applicability to 2018 Mangahas Case

As noted above, *Mangahas* is a 2018 case that held that the crime of rape under military law was not exempt from a five-year statute of limitations because it was not “punishable by death,” under the relevant statute of limitations, at the time of the charged offense. *See Mangahas*, 77 M.J. at 224-25. At the time of the offense in *Mangahas* and here a five-year statute of limitations applied

to all offenses, except that “[a] person charged . . . with any offense *punishable by death*, may be tried and punished at any time without limitation.” Article 43, UCMJ, 10 U.S.C. § 843 (1994) (emphasis added). Another section of the code provided that rape “shall be punished by death or such other punishment as a court-martial may direct.” *See Mangahas*, 77 M.J. at 223, quoting Article 120, UCMJ, 10 U.S.C. § 920 (Supp. II 1997). However, the Supreme Court had held decades before in *Coker v. Georgia* that the death penalty was unconstitutional for the crime of rape of an adult woman. Previous cases within the Court of Appeals for the Armed Forces had subsequently held that rape is nevertheless “punishable by death” for purposes of exempting it from the general five-year statute of limitations, despite the existence of *Coker*. *See Willenbring*, 48 M.J. at 180 (“We hold that rape is an ‘offense punishable by death’ for purposes of exempting it from the 5-year statute of limitations of Article 43(b)(1).”); *United States v. Stebbins*, 61 M.J. 366 (C.A.A.F. 2005) (relying on *Willenbring* for same proposition).

New?

Here, the threshold question is therefore whether *Mangahas* is a “new” rule. Even though the Supreme Court had previously held the death penalty unconstitutional for rape, and so it was not, in fact, “punishable by death” at the time of Hill’s offense, the *Mangahas* rule is a “new” rule for two main reasons. First, *Mangahas* explicitly overruled that court’s earlier holding from *Willenbring*, a post-*Coker* case, that rape was not subject to the five-year statute of limitations. *See Penry*, 492 U.S. at 314, 109 S. Ct. at 2944 (a decision that overrules an earlier holding breaks new ground and is thus new). Thus, in the Court of Appeals for the Armed Forces, *Mangahas* patently “breaks new ground” from previous C.A.A.F. jurisprudence. *Cf. United States v. Best*, No. 201600134, 2017 WL 2291588 at *4 (N.M. Ct. Crim. App. May 25, 2017) (following *Willenbring*’s “clear pronouncement of the law”); *United States v. Toussant*, No. 20080962, 2008 WL 8087964

at *3 (A. Ct. Crim. App. Dec. 30, 2008) (“the Court of Criminal Appeals for the Armed Forces has made clear that ‘rape is an “offense punishable by death” for purposes of exempting it from the 5-year statute of limitations of Article 43(b)(1)’”). Second, the fact that some judges of the C.A.A.F. had previously concluded that rape was “punishable by death,” for purposes of the statute of limitations, indicates that the outcome in *Mangahas* was “susceptible to debate among reasonable minds” even post-*Coker*. *Butler*, 494 U.S. at 415, 110 S. Ct. at 1217. The difference between the *Mangahas* opinion and the *Willenbring* opinion boils down to the question of whether the phrase “punishable by death” in Article 43(a) should be construed to mean punishable by death according to other provisions of the United States Code of Military Justice or punishable by death according to the ordinary meaning of the term. *Willenbring* adopted the former approach, citing congressional intent. *See* 48 M.J. at 179. *Mangahas* adopted the latter approach. *See* 77 M.J. at 224. The *Mangahas* approach to this question of statutory interpretation is not dictated by *Coker*: reasonable jurists could differ and have differed on this question of statutory interpretation.

Exceptions to Bar Against Retroactivity

Mangahas announces a new rule. It does not fall into any of the exceptions to the prohibition on retroactive application.

The *Mangahas* rule is not substantive. *Mangahas* did nothing to prohibit or change the government’s ability to prosecute the proscribed conduct—rape—in Hill’s case, nor did *Mangahas* prohibit a certain *category* of punishment for a class of defendants because of their status or offense. *Mangahas* also did not prohibit the death penalty for a certain class of defendants because of their status. Rather, it addressed the available statute of limitations in rape cases, based on the impact of a previous Supreme Court case on that statute. Unless Congress has clearly stated otherwise, a criminal statute of limitations is not jurisdictional, but sets forth a waivable affirmative defense.

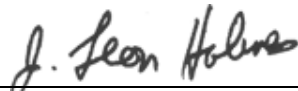
Musacchio v. United States, 577 U.S. ___, ___, 136 S. Ct. 709, 716, 193 L. Ed. 2d 639 (2016); *see also* *United States v. Soriano-Hernandez*, 310 F.3d 1099, 1103-04 (8th Cir. 2002); *Desjardins v. Dep’t of Navy*, 815 F. Supp. 96, 98-99 (E.D.N.Y. 1993) (interpreting Article 43 of the Uniform Code of Military Justice). A statute of limitation “provides a nonjurisdictional defense, not a jurisdictional limit.” *Musacchio*, 577 U.S. at ___, 136 S. Ct. at 718. Thus, a criminal statute of limitations does not affect the court’s power to hear the case, and a successful limitations defense does not deprive the court of jurisdiction—although raising the defense may change what the government must ultimately prove. *See id.*; *United States v. Titterington*, 374 F.3d 453, 459 (6th Cir. 2004) (explaining that jurisdictional statute grants federal courts the power to hear certain cases, no matter how much time has elapsed or what the government proves). *Mangahas* therefore did not alter the “class of persons that the law punishes.” *Schriro*, 542 U.S. at 353, 124 S. Ct. at 2523.

The rule here is not a watershed procedural rule that applies retroactively. *See Saffle*, 494 U.S. at 495, 108 S. Ct. at 1264. A five-year statute of limitations serves important purposes, but since only one other procedural rule is even possibly considered a watershed rule, it is unlikely a change in the statute of limitations is another one, akin to the right to a lawyer in serious criminal trials. *See, e.g., Whorton*, 549 U.S. at 418, 127 S. Ct. at 1182 (listing many cases rejecting retroactivity for new procedural rules). Moreover, the change in this statute of limitations is not “necessary to prevent an impermissibly large risk of an inaccurate conviction,” especially considering that some crimes are still exempt from the five-year statute of limitations, such as murder. *Id.* Finally, it does not “alter our understanding of the bedrock procedural elements essential to the fairness of a proceeding.” *Id.*

CONCLUSION

With these additional comments, the recommendation of Judge Volpe is adopted. Steven E. Hill's habeas corpus petition is dismissed with prejudice.

IT IS SO ORDERED this 27th day of November, 2018.



J. LEON HOLMES
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

STEVEN E. HILL
REG # 17672-035

PETITIONER

v.

2:17cv00003-JLH-JJV

C. V. RIVERA, Warden

RESPONDENT

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge J. Leon Holmes. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in a waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a new hearing for this purpose before either the District Judge or Magistrate Judge, you must, at the time you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence to be proffered at the new hearing (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The details of any testimony desired to be introduced at the new hearing in the form of an offer of proof, and a copy or the original of any documentary or other non-testimonial

evidence desired to be introduced at the new hearing.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing. Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

I. BACKGROUND

On October 24 and 25, 2012, Sergeant Steven E. Hill was tried by General Court Martial at Fort Stewart, Georgia. (Doc. No. 8-1.) He was found guilty of one charge of rape, one charge of sexual harassment of a subordinate soldier and two charges of wrongful sexual contact, for which he was sentenced “To be reduced to the grade of Private (E-1); to forfeiture of all pay and allowances; to be confined for 20 years; [and] to be discharged with a Dishonorable Discharge.” (*Id.* at 1-2.) The Convening Authority, Commanding General John M. Murray, ordered the sentence to be executed “except for that part of the sentence extending to a Dishonorable Discharge.” (*Id.* at 3.)

The United States Army Court of Criminal Appeals, in a *per curiam* opinion stated, “On consideration of the entire record, including consideration of the issues personally specified by the appellant, we hold the findings of guilty and the sentence is approved by the convening authority correct in law and fact. Accordingly, those findings of guilty and the sentence are AFFIRMED.” (Doc. No. 8-2.) The United States Court of Appeals for the Armed Forces denied his petition for review on November 2, 2015 and denied his petition for reconsideration on February 17, 2016. (Doc. No. 8-3.)

On January 9, 2017, Mr. Hill filed a *pro se* Petition for Writ of Habeas Corpus (Doc. No.

1) pursuant to 28 U.S.C. § 2241. This Court previously dismissed the Petition (Doc. Nos. 9 & 13) and Petitioner appealed (Doc. No. 17). The United States Court of Appeals for the Eighth Circuit affirmed the denial of Mr. Hill's sufficiency of the evidence and jurisdictional claims, but, "To the extent Hill asserted an argument based on the applicable statute of limitations, the judgment [was] vacated and the matter [was] remanded for the parties and the district court to reconsider this case in light of *United States v. Mangahas*, 77 M.J. 220 (C.A.A.F. 2018)." *Hill v. Rivera*, 724 Fed. App'x 511, at 512 (8th Cir. 2018) (per curiam).

Mr. Hill's convictions for wrongful sexual contact were based on events from January 2011, and his conviction for sexual harassment was based on events from September 1 and December 31, 2010. (Doc. No. 8-1 at 2.) The rape conviction was from June 1, 1998 and July 31, 1998. (*Id.*) Mr. Hill's Court Martial convened on October 24, 2012, so *Mangahas* only applies to his rape conviction.

The Court asked Respondent to state whether Mr. Hill was entitled to relief (Doc. No. 24), and Respondent says the ruling in *United States v. Mangahas* does not apply retroactively to Mr. Hill's case. (Doc. No. 31.) Mr. Hill was offered the opportunity to reply but did not. After careful consideration of the pleadings in this matter, for the following reasons, I find *Mangahas* does not provide Mr. Hill any relief and his Petition should be dismissed.

II. ANALYSIS

As a practical matter, it is understandable why Mr. Hill believes he is entitled to relief based on this new holding in *United States v. Mangahas*. However, I agree with Respondent that this would violate the longstanding non-retroactivity principle in *Teague v. Lane*, 489 U.S. 288 (1989).

A prisoner, through a collateral proceeding, may *only* obtain the benefit of a new rule, or the creation of a new rule in his or her case, if that rule falls within one of the two exceptions to the general principle that new rules will not be applied on collateral review. *Id.* Mr. Hill's new

rule does not lie within one of the two *Teague* exceptions.

The first *Teague* exception permits the retroactive application of a new rule if it is substantive. “A rule is substantive rather than procedural if it alters the range of conduct or the class of persons that the law punishes. In contrast, rules that regulate only the manner of determining the [Petitioner’s] culpability are procedural.” *Schriro v. Summerlin*, 542 U.S. 348, 353 (2004). Here, the change in the limitations period does not decriminalize any types of conduct and so it is not substantive. It does not alter the range of conduct or class of persons in any way. Therefore, does not fit within the first *Teague* exception.¹

The second *Teague* exception is that the rule must be a watershed rule. To qualify as a watershed rule, it must meet two requirements: First, the rule must be necessary to prevent an impermissibly large risk of an inaccurate conviction. Second, the rule must alter our understanding of the bedrock procedural elements essential to the fairness of the proceeding. *Whorton v. Bockting*, 549 U.S. 406, 418 (2007) (internal quotations and citations omitted).

To date, the United States Supreme Court has only identified one case as qualifying under the watershed exception - *Gideon v. Wainwright*, 372 U.S. 335 (1963).² *Mangahas* does not create a watershed rule because it meets neither of the two requirements: It is neither necessary to prevent an impermissibly large risk of inaccurate convictions nor does it alter our understanding of the bedrock procedural elements essential to the fairness of the proceeding, as was the case in *Gideon*.

After careful review of his Petition, the record and the briefs, I find Mr. Hill’s Petition for

¹ I agree with Respondent that *Mangahas* “does nothing to diminish the incontrovertible fact that Petitioner was the person who committed the rape, and the rape for which he was convicted still constitutes a criminal offense.” (Doc. No. 31 at 8.)

² Establishing that counsel must be appointed for any indigent defendant charged with a felony.

Writ of Habeas Corpus should be dismissed. This new rule does not fit within either of the *Teague* non-retroactivity exceptions, so Mr. Hill cannot succeed in establishing it in this collateral proceeding.

III. CONCLUSION

IT IS, THEREFORE, RECOMMENDED THAT:

1. Mr. Hill's Petition for Writ of Habeas Corpus (Doc. No. 1) be DISMISSED with prejudice.

DATED this 4th day of October, 2018.



JOE J. VOLPE
UNITED STATES MAGISTRATE JUDGE

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 17-2363

Steven E. Hill

Plaintiff - Appellant

v.

C V Rivera, Warden

Defendant - Appellee

Appeal from U.S. District Court for the Eastern District of Arkansas - Helena
(2:17-cv-00003-JLH)

JUDGMENT

Before BENTON, BOWMAN and KELLY, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court and the briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in part, vacated in part, and the cause is remanded to the district court for proceedings consistent with the opinion of this court.

May 29, 2018

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX F

APP 18



17-2363 Steven Hill v. C V Rivera "judgment filed sua sponte affirmed/vacated/remanded" (2:17-cv-00003-JLH)
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Eighth Circuit Court of Appeals

Notice of Docket Activity

The following transaction was filed on 05/29/2018

Case Name: Steven Hill v. C V
Rivera

Case Number: [17-2363](#)

Document(s): [Document\(s\)](#)

Docket Text:

JUDGMENT FILED - The judgment of the originating court is AFFIRMED, VACATED AND REMANDED in accordance with the opinion. DUANE BENTON, PASCO M. BOWMAN and JANE KELLY Scrg 2018 [4666157] [17-2363] (Michael Shay)

Notice will be electronically mailed to:

Mr. Jim McCormack, Clerk of Court: ared_appeals@ared.uscourts.gov
Mr. Richard Pence, Jr., Assistant U.S. Attorney: richard.pence@usdoj.gov,
amber.robinson@usdoj.gov

Notice will be mailed to:

Mr. Steven E. Hill
FEDERAL CORRECTIONAL INSTITUTION
P.O. Box 9000
Forrest City, AR 72336-9000

The following document(s) are associated with this transaction:

Document Description: Judgment With Opinions

Original Filename:

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Recipients:

- [Mr. Steven E. Hill](#)
- [Mr. Jim McCormack, Clerk of Court](#)
- [Mr. Richard Pence, Jr., Assistant U.S. Attorney](#)

The following information is for the use of court personnel:

DOCKET ENTRY ID: 4666157

RELIEF(S) DOCKETED:

affirmed/vacated/remanded

DOCKET PART(S) ADDED: 6055975, 6055976, 6055977

United States Court of Appeals
For the Eighth Circuit

No. 17-2363

Steven E. Hill

Plaintiff - Appellant

v. 2:17-cv-00003-JLH

C.V. Rivera, Warden

Defendant - Appellee

Appeal from United States District Court
for the Eastern District of Arkansas - Helena

Submitted: May 15, 2018

Filed: May 29, 2018

[Unpublished]

Before BENTON, BOWMAN, and KELLY, Circuit Judges.

PER CURIAM.

Steven E. Hill appeals after the district court dismissed his 28 U.S.C. § 2241 petition. Having jurisdiction under 28 U.S.C. § 1291, this court affirms in part, vacates in part, and remands the case for further proceedings.

APPENDIX G

APP 21

Hill is a federal inmate who was tried and convicted on several charges in a military court-martial. Upon de novo review, the judgment is affirmed as to Hill's claim of insufficient evidence to support his conviction. *See Lopez-Lopez v. Sanders*, 590 F.3d 905, 907 (8th Cir. 2010), *Allen v. U.S. Air Force*, 603 F.3d 423, 431 (8th Cir. 2010) ("it is not our duty to stand in the stead of the military courts to reexamine and weigh each item of evidence of the occurrence of events which tend to prove or disprove one of the allegations in the application for relief" (internal quotation marks omitted)). The judgment also is affirmed to the extent Hill argued that the military court-martial lacked jurisdiction solely due to his break in military service. *See* 10 U.S.C. § 803(a) (subject to statute of limitations, person who is in a status in which person is subject to Uniform Code of Military Justice (UCMJ) and who committed offense against UCMJ while formerly in status in which person was subject to UCMJ is not relieved from amenability to UCMJ jurisdiction for that offense by reason of termination of that person's former status).

To the extent Hill asserted an argument based on the applicable statute of limitations, the judgment is vacated and the matter is remanded for the parties and the district court to reconsider this case in light of *United States v. Mangahas*, 77 M.J. 220 (C.A.A.F. 2018).

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

STEVEN E. HILL
REG # 17672-035

PETITIONER

v.

No. 2:17CV00003-JLH-JJV

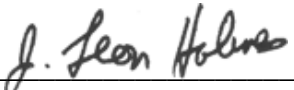
C. V. RIVERA, Warden

RESPONDENT

JUDGMENT

Consistent with the Order that was entered on this day, it is CONSIDERED, ORDERED,
and ADJUDGED that this case is DISMISSED with prejudice.

DATED this 10th day of May, 2017.



J. LEON HOLMES
UNITED STATES DISTRICT JUDGE

APPENDIX H

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

STEVEN E. HILL
REG # 17672-035

PETITIONER

v.

No. 2:17CV00003-JLH-JJV

C. V. RIVERA, Warden

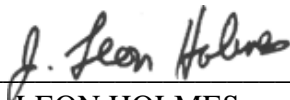
RESPONDENT

ORDER

The Court has reviewed the Proposed Findings and Recommended Disposition submitted by United States Magistrate Judge Joe J. Volpe and the Petitioner's objections. After carefully considering the objections and making a *de novo* review of the record in this case, the Court concludes that the Proposed Findings and Recommended Disposition should be, and hereby are, approved and adopted in their entirety as this Court's findings in all respects.

IT IS THEREFORE ORDERED that Mr. Hill's Petition for Writ of Habeas Corpus (Doc. No. 1) is DISMISSED with prejudice.

DATED this 10th day of May, 2017.



J. LEON HOLMES
UNITED STATES DISTRICT JUDGE

APPENDIX I

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

STEVEN E. HILL
REG # 17672-035

PETITIONER

v.

2:17CV00003-JLH-JJV

C. V. RIVERA, Warden

RESPONDENT

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge J. Leon Holmes. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in a waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a new hearing for this purpose before either the District Judge or Magistrate Judge, you must, at the time you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence to be proffered at the new hearing (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The details of any testimony desired to be introduced at the new hearing in the form of an offer of proof, and a copy or the original of any documentary or other non-testimonial evidence

desired to be introduced at the new hearing.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing. Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

I. BACKGROUND

On January 9, 2017, Mr. Hill filed a *pro se* Petition for Writ of Habeas Corpus (Doc. No. 1) pursuant to 28 U.S.C. § 2241. Mr. Hill says, “This case involves a Military Court Martial. The petitioner request[s] this court not only to hear this appeal but grant him the requested verdict. That the Court Martial had no jurisdiction to try Steven Hill in the [aforementioned] tribunal.” (*Id.* at 1.) Respondent has filed a Response, so this matter is ripe for a decision. After carefully considering the Petition, Response, and accompanying documents, I recommend Mr. Hill’s Petition for Writ of Habeas Corpus be dismissed.

II. ANALYSIS

On October 24 and 25, 2012, Sergeant Steven E. Hill was tried by General Court Martial at Fort Stewart, Georgia. (Doc. No. 8-1.) He was found guilty of one charge of rape, one charge of sexual harassment of a subordinate soldier and two charges of wrongful sexual contact, for which he was sentenced “To be reduced to the grade of Private (E-1); to forfeiture of all pay and allowances; to be confined for 20 years; [and] to be discharged with a Dishonorable Discharge.” (*Id.* at 1-2.) The Convening Authority, Commanding General John M. Murray, ordered the sentence to be executed “except for that part of the sentence extending to a Dishonorable Discharge.” (*Id.* at 3.) The United States Army Court of Criminal Appeals, in a *Per Curiam* opinion stated, “On

consideration of the entire record, including consideration of the issues personally specified by the appellant, we hold the findings of guilty and the sentence is approved by the convening authority correct in law and fact. Accordingly, those findings of guilty and the sentence are AFFIRMED.” (Doc. No. 8-2.) The United States Court of Appeals For The Armed Forces denied his petition for review on November 2, 2015, and denied his petition for reconsideration on February 17, 2016. (Doc. No. 8-3.)

Mr. Hill is a prisoner at the Federal Correctional Institution Forrest City because the Uniform Code of Military Justice allows for the transfer of military prisoners to the custody of the U.S. Bureau of Prisons. 10 U.S.C. § 858(a). And 28 U.S.C. § 2241 is a proper means for a person convicted by court-martial to seek habeas relief after exhausting his direct military appeals and such post-conviction remedies as he may have under the Uniform Code of Military Justice. *Clinton v. Goldsmith*, 526 U.S. 529 (1999). But “Military law, like state law, is a jurisprudence which exists separate and apart from the law which governs in our federal judicial establishment.” *Burns v. Wilson*, 346 U.S. 137, 140 (1953). The United States Supreme Court explained:

This Court has played no role in its development; we exerted no supervisory power over the courts which enforce it; the rights of men in the armed forces must perforce be conditioned to meet certain overriding demands of discipline and duty, and the civil courts are not the agencies which must determine the precise balance to be struck in this adjustment. The Framers expressly entrusted that task to Congress.

Id. Therefore, “It is the limited function of [this Court] to determine whether the military have given fair consideration to each of [Mr. Hill’s] claims.” *Id.* at 145.

In this case, Mr. Hill states the military had no jurisdiction to prosecute him for the charges for which he is imprisoned. Beyond this allegation, Mr. Hill provides no factual basis to support his contention.

Based on the documents submitted by Respondent, there is no reason to doubt that the

military had jurisdiction to try Mr. Hill. Mr. Hill was a Sergeant on active duty serving in the 3rd Infantry Division at Fort Stewart, Georgia. (Doc. No. 8-1 at 1.) The Court Martial was convened by the Commanding General (*Id.* at 3), a military judge presided over the matter, and Mr. Hill was represented by military defense counsel (*Id.* at 5). Mr. Hill was also represented by military counsel when he sought review by the United States Army Court of Criminal Appeals. (Doc. No. 8-2.) Accordingly, I find Mr. Hill's claims to be wholly without merit and his Petition should be dismissed with prejudice.

III. CONCLUSION

IT IS, THEREFORE, RECOMMENDED THAT:

1. Petitioner's Petition (Doc. No. 1) be DISMISSED with prejudice.

DATED this 18th day of April, 2017.



JOE J. VOLPE
UNITED STATES MAGISTRATE JUDGE



Neutral

As of: April 10, 2017 4:21 PM Z

United States v. Hill

United States Court of Appeals for the Armed Forces

February 17, 2016, Decided

No. 15-0734/AR.

Reporter

2016 CAAF LEXIS 146 *; 75 M.J. 237

U.S. v. Steven E. Hill.

Notice: DECISION WITHOUT PUBLISHED OPINION

Prior History: CCA 20120979 [*1] .

United States v. Hill, 75 M.J. 107, 2015 CAAF LEXIS 960 (C.A.A.F., Nov. 2, 2015)

Core Terms

petition for reconsideration

Opinion

On consideration of Appellant's petition for reconsideration of the Court's order issued on November 2, 2015, it is ordered that said petition for reconsideration is hereby denied.

End of Document

Angela SWILLEY
APP 29

APPENDIX K





Neutral

As of: April 10, 2017 4:21 PM Z

United States v. Hill

United States Court of Appeals for the Armed Forces

November 2, 2015, Decided

No. 15-0734/AR.

Reporter

2015 CAAF LEXIS 960 *; 75 M.J. 107

U.S. v. Steven E. Hill.

Notice: DECISION WITHOUT PUBLISHED OPINION

Subsequent History: Reconsideration denied by
United States v. Hill, 2016 CAAF LEXIS 146 (C.A.A.F.,
Feb. 17, 2016)

Prior History: CCA 20120979 [*1] .

United States v. Hill, 75 M.J. 59, 2015 CAAF LEXIS 878
(C.A.A.F., 2015)

Opinion

Petition for Grant of Review Denied.

End of Document

Angela SWILLEY
APP 30

APPENDIX L



UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
COOK, TOZZI, and HAIGHT
Appellate Military Judges

UNITED STATES, Appellee
v.
Sergeant STEVEN E. HILL
United States Army, Appellant

ARMY 20120979

Headquarters, Fort Stewart
Tiernan P. Dolan, Military Judge
Colonel Randall J. Bagwell, Staff Judge Advocate

For Appellant: Colonel Kevin Boyle, JA; Major Amy E. Nieman, JA; Captain Payum Doroodian, JA (on brief).

For Appellee: Colonel John P. Carrell, JA; Major A.G. Courie III, JA; Captain Benjamin W. Hogan, JA; Lionel C. Martin, JA (on brief).

29 June 2015

DECISION

Per Curiam:

On consideration of the entire record, including consideration of the issues personally specified by the appellant, we hold the findings of guilty and the sentence as approved by the convening authority correct in law and fact. Accordingly, those findings of guilty and the sentence are AFFIRMED.

FOR THE COURT:

COLM H. SQ

JALS-CCR

APP 31

APPENDIX M



DEPARTMENT OF THE ARMY REPORT OF RESULT OF TRIAL

For use of this form, see AR 27-10; the proponent agency is OTJAG.

TO:

Commander, Headquarters, Fort Stewart, Fort Stewart, GA 31314

1. Notification under R.C.M. 1101 and AR 27-10, paragraph 6-30 is hereby given in the case of the United States v

SGT

Steven E. Hill, [REDACTED], A CO, 703rd BSB, 41BCT, 3 ID, Fort Stewart, GA 31314

2. Trial by General court-martial on 24-25 Oct, 2012 at Fort Stewart, Georgiaconvened by: CMCO Number 14 HQ, 3rd Infantry Division and Fort Stewart dated 5 October 2011 and CMCO #15

HQ, 3ID and Fort Stewart, dtd 1 June 12 as adopted by CMCO #1, HQ, Fort Stewart, dtd 8 August 2012 as amended by CMCO

3. Summary of offenses, pleas, and findings:

CH	ART UCMJ	SPEC	BRIEF DESCRIPTION OF OFFENSE(S) (SEE CONTINUATION SHEET)	PLEA	FINDING
----	----------	------	---	------	---------

4. SENTENCE:

To be reduced to the grade of Private (E-1); to forfeit all pay and allowances; to be confined for 20 years; to be discharged with a Dishonorable Discharge.

5. Date sentence adjudged and effective date of any forfeiture or reduction in grade
(See UCMJ Articles 57-58b and R.C.M. 1101.)(YYYYMMDD) : 20121025 / 20121108

6. Contents of pretrial agreement concerning sentence, if any:

None.

7. Number of days of pretrial confinement, if any:

N/A.

8. Number of days of judge-ordered administrative credit for pretrial confinement or restriction found tantamount to confinement, if any:

N/A.

9. Total pretrial confinement credit toward post-trial confinement

N/A.

10. Name(s) and SSN(s) of companion accused or co-accused, if any:

None.

11. DNA processing



is



is not required.

12. Conviction(s)



does



does not require sex offender registration.

CF:

1-Cdr, 1-A CO, 1-703 BSB; 1-Cdr, 1-703 BSB; 1-OSJA; 1-Finance Officer; 1-S1; 1-Cdr, Confinement Facility, 1-TDS,
1-Post-Trial; 1-TC; 1-VWLO (Ms. Johnson)

TYPED NAME

JOSEPH A. PIASTA

SIGNATURE

RANK

BRANCH OF SERVICE

CPT

U.S. ARMY

DA FORM 4430, MAY 2010

PREVIOUS EDITION IS OBSOLETE.

APP 32

APPENDIX N

PENGAD 800-631-6888

GOVERNMENT
EXHIBIT

1

DA FORM 4430 CONTINUATION SHEET PERTAINING TO SGT Hill, Steven E.,
 [REDACTED], A CO, 703rd BSB, 4th Infantry Brigade Combat Team, 3rd Infantry Division, Fort Stewart,
 GA 31314

Item 2 Cont'd:

#9, HQ, Fort Stewart, dtd 23 October 2012.

Item 3 Cont'd:

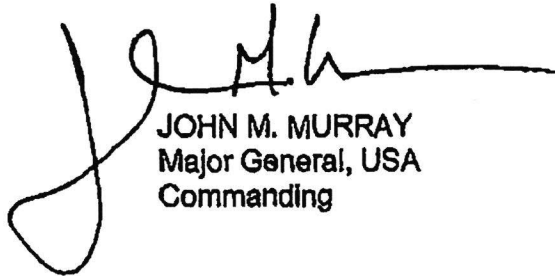
CH	ART UCMJ	SPEC	DESCRIPTION	PLEA	FINDINGS
I	120	1	Did, at or near Fort Stewart, Georgia, between on or about 1 January 2011 and on or about 31 January 2011, cause Mrs. B.W. to engage in a sexual act, to wit: sexual intercourse, by using strength sufficient that she could not avoid or escape the sexual conduct.	NOT GUILTY	Not guilty to rape; Guilty to lesser offense of wrongful sexual contact.
		2	Did, at or near Fort Stewart, Georgia, between on or about 1 January 2011 and on or about 31 January 2011, engage in sexual contact with Ms. S.S., to wit: touching her inner thigh and breasts through her clothing, and such sexual contact was without legal justification or lawful authorization and without the permission of Ms. S.S.	NOT GUILTY	GUILTY
II	93	1	Did, at or near Fort Stewart, Georgia, between on or about 1 September 2010 and on or about 31 December 2010, on divers occasions, did maltreat Specialist (E-4) K.C., a person subject to his orders, by sexually harassing her.	NOT GUILTY	GUILTY
		2	Did, at or near Fort Stewart, Georgia, between on or about 1 July 2010 and on or about 31 August 2010, on divers occasions, did maltreat Private (E-2) S.T., a person subject to his orders, by sexually harassing her.	NOT GUILTY	NOT GUILTY
ADD CH	120	THE	Did, at or near Fort Lee, Virginia, between on or about 1 June 1998 and on or about 31 July 1998, rape A.H.	NOT GUILTY	GUILTY

ACTION

DEPARTMENT OF THE ARMY
HEADQUARTERS, FORT STEWART
FORT STEWART, GEORGIA 31314-5000

06 NOV 2013

In the case of Sergeant Steven E. Hill, [REDACTED] U.S. Army, Alpha Company, 703rd
Brigade Support Battalion, 4th Infantry Brigade Combat Team, 3rd Infantry Division,
Fort Stewart, Georgia 31314, the sentence is approved and, except for that part of the
sentence extending to a Dishonorable Discharge, will be executed. The forfeiture of all
pay and allowances was deferred effective 8 November 2012 and is terminated this
date.



JOHN M. MURRAY
Major General, USA
Commanding

HILL, Steven E. [REDACTED]

OFFENSE/SENTENCE: SEE LOAD SHEET

REMARKS: The investigation was initiated when victim #1 reported she was sexually assaulted while attending Advanced Individual Training in 1998. Victim #1 reported she was raped in her barracks room by Inmate Hill while she was incapacitated from excessive alcohol consumption during a weekend pass. Victim #1 stated after drinking at an on-post bar she returned to her barracks room and passed out. Victim #1 stated she awoke to Inmate Hill holding her down and raping her. Victim #1 stated she screamed for him to stop, which he did and left the room.

On diverse occasions between 1 September 2010 and 31 December 2010, Inmate Hill sexually harassed victim #2, a subordinate Soldier.

Victim #3 reported that she was sexually assaulted by Inmate Hill. In her sworn statement she stated Inmate Hill visited her residence and hung out with her husband. She stated Inmate Hill brought alcohol every time he visited her residence. She stated during one of these visits Inmate Hill entered her bedroom while she was in bed, closed the door behind him, and told her she could not scream because of her husband's probation. She stated Inmate Hill twisted her left arm and put it behind her back, then placed his other hand on her throat. She related he shot his tongue into her mouth, unbuttoned his pants, and penetrated her vagina with "something meaty". She stated she was not sure if it was his penis or finger.

Between 1 January 2011 and 31 January 2011, Inmate Hill engaged in sexual contact with victim #4 by touching her inner thigh and breasts through her clothing without victim #4's permission.

GCMO No. 52, DA, HQ, Fort Stewart, Fort Stewart, Georgia 31314, dated 6 November 2013, continued:


SENTENCE

Sentence adjudged on 25 October 2012: To be reduced to the grade of Private (E-1), to forfeit all pay and allowances, to be confined for 20 years, and to be dishonorably discharged from the service.

ACTION

The sentence is approved and, except for that part of the sentence extending to a Dishonorable Discharge, will be executed. The forfeiture of all pay and allowances was deferred effective 8 November 2012 and is terminated this date.

BY COMMAND OF MAJOR GENERAL MURRAY:


BRADFORD D. BIGLER
MAJ, JA
Chief, Military Justice

DISTRIBUTION:

- 1-Accused
- 1-Military Judge (LTC Dolan)
- 1-Trial Counsel (CPT Piasta)
- 1-Defense Counsel (CPT Gonzalez)
- 1-Cdr, A Co, 703 BSB
- 1-Cdr, 703 BSB
- 1-Cdr, 4IBCT
- 2-Cdr, 3ID & Fort Stewart, ATTN: SJA
- 1-Cdr, Fort Stewart, ATTN: FAO
- 1-Cdr, US Army Enlisted Records and Evaluations Center, ATTN: PCRE-FS, Fort Benjamin Harrison, IN 46249
- 1-Clerk of Court, JALS-CCZ, US Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060-5546
- 1-Cdr, USACIDC, PMO, FSGA
- 1-Cdr, HQ, USACIDC, ATTN: CIOP-ZC, 27130 Telegraph Road, Russell-Knox Building, Quantico, VA 22134-2253
- 1-Cdr, Army Corrections Command, 150 Army Pentagon (DAPM-ACC), Washington, DC 20310-0150
- 1-US Army Criminal Investigations Laboratory, 4930 North 31st Street, Forest Park, GA 30297-5205
- 1-Reference Set
- 1-Each ROT

PRISONER SENTENCE COMPUTATION				DATE (YYYYMMDD) 2016/08/18	
1. NAME (Last, First, M) HILL, STEVEN E					
2. SSN [REDACTED]		3. ID NUMBER 92402-12-01			
3. SENTENCE TO CONFINEMENT INFORMATION					
	Years	Months	Days	Effective Date	
ADJUDGED	20	0	0	2012/10/25	
PRE-TRIAL AGREEMENT	-	-	-		
CONVENING ACTION	20	0	0	2013/11/08	
APPEAL	-	-	-		
4. SENTENCE COMPUTATION					
ACTION	YEAR	MONTH	DAY	Expiration Table Number	
a. Date Sentence Adjudged	2012	10	25	41207	
b. Deferred Date	2012	10	25	41207	
c. Current Length of Sentence	20	0	0		
d. Result of b plus c	2032	10	25	48512	
e. Less One Day			-1	-1	
f. Result of d Minus e	2032	10	24	48511	
g. International Date Line (IDL) if none, enter 0			0	0	
h. Result of IDL Adjustment	2032	10	24	48511	
i. Actual Pretrial Confinement Credit			-0	-0	
j. Result of h minus i	2032	10	24	48511	
k. Other Credits Ordered by Courts			-0	-0	
l. Result of j minus k	2032	10	24	48511	
m. Total Inoperative Time			+0	+0	
n. Result of l plus m	2032	10	24	48511	
o. Good Conduct Time			-2400	-2400	
p. Result of n minus o	2028	03	30	48111	
q. Add Forfeited GCT (Total Forfeited 0 - Restored 0 = 0)			+0	+0	
r. Result of p plus q	2028	03	30	48111	
s. Less Abatements (Total Earned 99 - Forfeited 0 + Restored 0 = 99)			-99	-99	
t. Result of r minus s Minimum Release Date (MRD)	2025	12	21	48012	
Maximum Release Date (Adjusted for Multiple Sentences)					
	2032	10	24		
Minimum Release Date (Adjusted for Multiple Sentences)					
	2025	12	21		
COMPUTED BY: (Rank Last Name, First Name and Signature) Gilbert R. Hernandez				DATE: (yyyy/mm/dd) AUG 17 2016	
REVIEWED BY: (Rank Last Name, First Name and Signature) Powers, J. Davis, C. 20160818				DATE: (yyyy/mm/dd) 20160818	
INMATE: (Signature) [Signature]				DATE: (yyyy/mm/dd) 2016/09/06	

ACIS Sentence Computation Report

INFORMATION OF MILITARY INMATE
GOOD CONDUCT TIME (STATUTORY GOOD TIME)
EXTRA GOOD CONDUCT TIME/ABATEMENT (MERITORIOUS GOOD TIME)

INMATE: HILL, STEVEN E.

SOCIAL SECURITY NUMBER: [REDACTED]

U.S. DISCIPLINARY BARRACKS REGISTER NUMBER: 92402

FEDERAL BUREAU OF PRISONS REGISTER NUMBER: 17672-035

This inmate was credited with 2400 days of Good Conduct Time (Statutory Good Time). This is reflected on the Prisoner Sentence Computation (ACIS Sentence Computation Report) attached to this notice. That was the maximum allowable credit for his/her entire sentence to confinement. No additional Good Conduct Time/Statutory Good Time should be credited without the written approval of the U.S. Disciplinary Barracks.

Prior to his transfer to the Federal Bureau of Prisons, this inmate earned 99 days Extra Good Conduct Time (Meritorious Good Time). This is reflected on the Prisoner Sentence Computation (ACIS Sentence Computation Report) attached to this notice. This inmate's Extra Good Conduct Time earning rate was terminated upon transfer to the Federal Bureau of Prisons.

The U.S. Disciplinary Barracks will audit the prisoners work history yearly to determine if the award of Meritorious Good Time is appropriate. A new Prisoner Sentence Computation (ACIS Sentence Computation Report) will be provided which reflects the award (if given) and the inmate's new minimum release date.

At the time of transfer to the Federal Bureau of Prisons this inmate had forfeited 0 days of Good Conduct Time (Statutory Good Time) and 0 days of Extra Good Conduct Time (Meritorious Good Time). Normally Forfeited Good Conduct Time and Extra Good Conduct Time will not be restored to the inmate whose misconduct resulted in the forfeiture. In extraordinary circumstances, inmates who have forfeited Good Conduct Time and Extra Good Conduct Time, may be considered for return of that time upon recommendation by the Warden of the inmate's Federal Bureau of Prisons facility.

In the event this individual is released on parole and subsequently violates, please notify the U.S. Disciplinary Barracks. Information provided should include date of release, date of re-confinement, street credit granted, and date of re-parole if known. A new Prisoner Sentence Computation (ACIS Sentence Computation Report) will be provided which reflects the parole violation adjustments.

Department of the Army
U.S. Disciplinary Barracks
ATTN: DIA (Inmate Personnel Division)
1301 N Warehouse Rd
Fort Leavenworth, KS 66027-2304

Tel: (913) 758-3646
FAX: (913) 758-3647

10 U.S.C. § 843. Art. 43. Statute of limitations

(a) No Limitation for Certain Offenses.—A person charged with absence without leave or missing movement in time of war, with murder, rape or sexual assault, or rape or sexual assault of a child, maiming of a child, kidnapping of a child, or with any other offense punishable by death, may be tried and punished at any time without limitation.

(b) Five-year Limitation for Trial by Court-martial.—(1) Except as otherwise provided in this section (article), a person charged with an offense is not liable to be tried by court-martial if the offense was committed more than five years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

(2)(A) A person charged with having committed a child abuse offense against a child is liable to be tried by court-martial if the sworn charges and specifications are received during the life of the child or within ten years after the date on which the offense was committed, whichever provides a longer period, by an officer exercising summary court-martial jurisdiction with respect to that person.

(B) In subparagraph (A), the term "child abuse offense" means an act that involves abuse of a person who has not attained the age of 16 years and constitutes any of the following offenses:

(i) Any offense in violation of section 920, 920a, 920b, 920c, or 930 of this title (article 120, 120a, 120b, 120c, or 130), unless the offense is covered by subsection (a).

(ii) Aggravated assault, assault consummated by a battery, or assault with intent to commit specified offenses in violation of section 928 of this title (article 128).

(C) In subparagraph (A), the term "child abuse offense" includes an act that involves abuse of a person who has not attained the age of 18 years and would constitute an offense under chapter 110 or 117 of title 18 or under section 1591 of that title.

(3) A person charged with an offense is not liable to be punished under section 815 of this title (article 15) if the offense was committed more than two years before the imposition of punishment.

(c) Tolling for Absence Without Leave or Flight From Justice.—Periods in which the accused is absent without authority or fleeing from justice shall be excluded in computing the period of limitation prescribed in this section (article).

(d) Tolling for Absence From US or Military Jurisdiction.—Periods in which the accused was absent from territory in which the United States has the authority to

apprehend him, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this article.

(e) Extension for Offenses in Time of War Detrimental to Prosecution of War.—For an offense the trial of which in time of war is certified to the President by the Secretary concerned to be detrimental to the prosecution of the war or inimical to the national security, the period of limitation prescribed in this article is extended to six months after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

(f) Extension for Other Offenses in Time of War.—When the United States is at war, the running of any statute of limitations applicable to any offense under this chapter—

(1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not;

(2) committed in connection with the acquisition, care, handling, custody, control, or disposition of any real or personal property of the United States; or

(3) committed in connection with the negotiation, procurement, award, performance, payment, interim financing, cancellation, or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the war, or with any disposition of termination inventory by any war contractor or Government agency; is suspended until three years after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

(g) Defective or Insufficient Charges.—(1) If charges or specifications are dismissed as defective or insufficient for any cause and the period prescribed by the applicable statute of limitations—

(A) has expired; or

(B) will expire within 180 days after the date of dismissal of the charges and specifications, trial and punishment under new charges and specifications are not barred by the statute of limitations if the conditions specified in paragraph (2) are met.

(2) The conditions referred to in paragraph (1) are that the new charges and specifications must—

(A) be received by an officer exercising summary court-martial jurisdiction over the command within 180 days after the dismissal of the charges or specifications; and

(B) allege the same acts or omissions that were alleged in the dismissed charges or specifications (or allege acts or omissions that were included in the dismissed charges or specifications).

(h) **Fraudulent Enlistment or Appointment.**—A person charged with fraudulent enlistment or fraudulent appointment under section 904a(1) of this title (article 104a(1)) may be tried by court-martial if the sworn charges and specifications are received by an officer exercising summary court-martial jurisdiction with respect to that person, as follows:

(1) In the case of an enlisted member, during the period of the enlistment or five years, whichever provides a longer period.

(2) In the case of an officer, during the period of the appointment or five years, whichever provides a longer period.

(i) **DNA Evidence.**—If DNA testing implicates an identified person in the commission of an offense punishable by confinement for more than one year, no statute of limitations that would otherwise preclude prosecution of the offense shall preclude such prosecution until a period of time following the implication of the person by DNA testing has elapsed that is equal to the otherwise applicable limitation period.

10 U.S.C. Sec. 843 Art. 43. Statute of limitations (United States Code (2020 Edition))