RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2002-02778

XXXXXXX COUNSEL: NONE

HEARING DESIRED: YES

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APPLICANT REQUESTS THAT:

1.  The conviction from his court-martial and the fine imposed as part of the sentence be set aside.

2.  The Board order a retrial, or provide retirement in the grade of chief master sergeant (E-9), with all rights and benefits, to include an honorable discharge.

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APPLICANT CONTENDS THAT:

He was court-martialed and found guilty of crimes he did not commit. His attorneys failed to pursue legitimate evidence of his innocence during trial. They failed to provide him with an adequate defense because of their adulterous relationship with each other during the trial. He has endured exhaustive appeals, but to no avail; the courts would not review this aspect of his appeal, only the events that transpired during trial. He served three and a half years of hard labor at Fort Leavenworth, Kansas and another five years of parole; through it all, he was treated unfairly. Despite this, he has conducted himself as a model citizen and started three companies. He and his wife are hurting financially and he believes he is due the benefits afforded a military member who has served his country.

In support of his appeal, the applicant provides two expanded statements, copies of excerpts of his military personnel records, correspondence related to the conduct of his attorneys during trial, various inquiries on his behalf from members of Congress, and several supporting statements, letters, and certificates of appreciation describing his positive contributions to the community.

The applicant’s complete submission, with attachments, is at Exhibit A.

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STATEMENT OF FACTS:

The applicant’s military personnel records indicate he enlisted in the Regular Air Force on 4 Sep 81 and was progressively promoted to the grade of staff sergeant (E-5), effective and with a date of rank of 1 Jul 87.

On 28 Jul 92, the applicant was sentenced to a bad conduct discharge (BCD), ten years confinement, forfeiture of $250.00 pay per month for ten years, reduction to the grade of airman basic (E-1), and a $70,000.00 fine for being convicted at a general court-martial of six specifications of accepting or soliciting bribes totaling over $70,000; one specification of impersonating an agent of superior authority; four specifications of extortion; four specifications of larceny of currency, the property of the United States, totaling over $20,000; four specifications of violating an Air Force Regulation by soliciting or accepting gifts from contractors; and two specifications of conspiracy to commit larceny; all in violation of various articles of the Uniform Code of Military Justice (UCMJ). All of the alleged offenses arose from his service as a contingency contracting officer at Al Dhafra Air Base, United Arab Emirates (UAE) during Operations DESERT SHIELD and DESERT STORM.

On 11 Aug 93, the court-martial convening authority approved the sentence, with the exception of the BCD, and directed it be executed. On 21 Sep 98, the conviction and sentence, to include the BCD, were affirmed and the applicant was furnished a BCD on 2 Oct 98 and credited with 13 years, 2 months, and 26 days of total active service.

Pursuant to the Board’s request, the Federal Bureau of Investigation (FBI) provided an Investigative Report which is attached at Exhibit C.

The remaining relevant facts pertaining to this application are contained in the letter prepared by the appropriate office of the Air Force which is attached at Exhibit D.

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AIR FORCE EVALUATION:

AFLOA/JAJM recommends denial, indicating the applicant’s contentions are without merit and constitute neither an error nor injustice. It is important to note the AFBCMR is without authority to reverse, set aside, or otherwise expunge a court-martial conviction that occurred on or after 5 May 50. Specifically, Title 10, United States Code, Section 1552(f)(1) permits the correction of a record to reflect actions taken by reviewing authorities under the UCMJ. Additionally, Section 1552(f)(2) of the same title permits the correction of records related to action on the sentence of courts-martial for the purpose of clemency. While clemency is an option, there is no reason for the Board to exercise clemency in this case. The applicant betrayed his position of trust as a contingency contracting officer and managed to turn quite a profit from his wartime duties through bribery, graft, conspiracy, and larceny. He was appropriately tried by a general court-martial, the sentence of which was well within the legal limits and was an appropriate punishment for the offenses committed. It is probably not a coincidence the sentence included a fine of $70,000.00, considering that he was found guilty of accepting or soliciting bribes or graft totaling over $70,000.00. The findings of guilty and the sentence, including the BCD and the fine, were affirmed upon appellate review. The United States Air Force Court of Criminal Appeals (AFCCA) rejected his ineffective assistance of counsel argument after they determined the sexual relations between defense counsel during their representation of an accused did not necessarily create a conflict of interest. The court noted the defense team’s level of preparation was very high and described the defense mounted as aggressive, energetic, and well prepared. Additionally, the SECAF twice chose not to remit the fine, but as an act of grace, agreed to delay its collection until 1 Jun 00. The applicant has known he would have to pay this fine and has had ample opportunity to pay it down since his release. The members of the court and subsequent review authorities were convinced of the applicant’s guilt beyond a reasonable doubt and the applicant has provided no evidence to support his assertion of innocence.

A complete copy of the AFLOA/JAJM evaluation is at Exhibit D.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 27 Oct 04 for review and comment within 30 days. In response, Counsel requested additional time to gather additional evidence and, as a result, the case was administratively closed pending a response from the applicant and/or counsel (Exhibit F). His case was reopened by virtue of his latest submission, dated 4 Jan 10.

A copy of the FBI Investigative Report and a request for post-service information was forwarded to the applicant on 25 Oct 10 for review and comment within 30 days. In response, he describes his otherwise honorable active service and his extensive positive contributions to his community as a business owner and community leader since his discharge. He provides an expanded statement and copies of several letters and certificates of appreciation, supporting statements, and newspaper articles (Exhibit H).

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THE BOARD CONCLUDES THAT:

1.  The applicant has exhausted all remedies provided by existing law or regulations.

2.  The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.

3.  Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. We note that this Board is without authority to reverse, set aside, or otherwise expunge a court-martial conviction. Rather, in accordance with Title 10, United States Code, Section 1552(f), actions by this Board are limited to corrections to the record to reflect actions taken by the reviewing officials and action on the sentence of the court-martial for the purpose of clemency. We find no evidence which indicates the applicant’s service characterization, which had its basis in his court-martial conviction and was a part of the sentence of the military court, was improper or that it exceeded the limitations set forth in the Uniform Code of Military Justice (UCMJ). We have considered the applicant’s overall quality of service, the court-martial conviction which precipitated the discharge, the seriousness of the offenses to which convicted, and the documentation pertaining to the applicant’s post-service activities. Based on the evidence of record, we cannot conclude that clemency is warranted. Therefore, we find no basis upon which to favorably consider this application.

4. The applicant’s case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

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THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

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The following members of the Board considered AFBCMR Docket Number BC-2002-02778 in Executive Session on 20 Jan 11, under the provisions of AFI 36-2603:

Mr. XXXXXXXXXX, Panel Chair

Ms. XXXXXXXXXX, Member

Mr. XXXXXXXXXX

The following documentary evidence pertaining to AFBCMR Docket Number BC-2002-02778 was considered:

Exhibit A. DD Forms 149, dated 22 Aug 02 and 4 Jan 10,

w/atchs.

Exhibit B. Applicant's Master Personnel Records.

Exhibit C. FBI Report.

Exhibit D. Letter, AFLOA/JAJM, dated 5 Dec 02, w/atchs.

Exhibit E. Letter, AFBCMR, dated 27 Oct 04.

Exhibit F. Letter, Counsel, dated 24 Nov 04.

Exhibit G. Letter, AFBCMR, dated 25 Oct 10, w/atch.

Exhibit G. Letter, Applicant, dated 1 Nov 10, w/atchs.

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Panel Chair