

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

Salvador DIAZ,		RESPONSE TO COURT ORDER
Petitioner		
v.		
The Judge Advocate General		Crim.App. No. 200200374
of the Navy		USCA Dkt. No 03-8014/NA
Respondent		

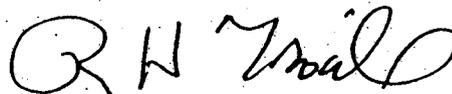
TO THE JUDGES OF THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

On August 5, 2003, the United States Court of Appeals for the Armed Forces (CAAF), acting upon a Petition for Extraordinary Relief filed personally by the petitioner, granted the petitioner's petition by remanding the case to the Navy-Marine Corps Court of Criminal Appeals (NMCCA). In that decision, the NMCCA was ordered to "expeditiously review the processing and status of Petitioner's Article 66 appeal." The NMCCA was also ordered to "take appropriate action to ensure that Petitioner receives the rights he is entitled to under Article 66 and Article 70, and issue orders as are necessary to ensure timely filing of an Assignment of Errors (sic) and Brief on behalf of Petitioner and the timely filing of an Answer . . . on behalf of the Government." Additionally, the NMCCA was ordered to report back to the CAAF within 60 days detailing the "steps taken to comply" with CAAF's opinion in this case.

In compliance with the Order of the CAAF to the NMCCA to report the steps taken in this case, the following information is provided. The NMCCA issued an Order on August 14, 2003, to the currently assigned appellate defense counsel of record in this case and his supervisor, along with the assigned appellate Government counsel and the Director of the Appellate Government Division, Navy-Marine Corps Appellate Review Activity, to attend a Chamber's Conference with the Chief Judge, NMCCA, on August 20, 2003. Attachment A. On August 22, 2003, following that Chamber's Conference, the NMCCA issued an Order to the petitioner's appellate defense counsel and to the Government establishing a briefing schedule before the

NMCCA in this case. Attachment B. Under this schedule, the appellant's brief is to be filed with the NMCCA by October 21, 2003 and the Government's response is due no later than November 21, 2003.

For the Court.

A handwritten signature in black ink, appearing to read "R.H. Troidl". The signature is written in a cursive style with a large, looped initial "R".

R.H. TROIDL

Clerk of Court

Navy-Marine Corps Court of
Criminal Appeals

UNITED STATES NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS

U N I T E D S T A T E S) NMCM No. 200200374
))
 Appellee))
))
 v.) GENERAL COURT-MARTIAL
))
Salvador Diaz))
098 48 7391))
Chief Fire Controlman (E-7)))
U.S. Navy) O R D E R
))
 Appellant))

On 5 August 2003, the United States Court of Appeals for the Armed Forces, acting upon a Petition for Extraordinary Relief filed personally by the appellant, granted the appellant's petition as follows:

1. This case is remanded to the Navy-Marine Corps Court of Criminal Appeals. That court shall expeditiously review the processing and status of Petitioner's Article 66 appeal.
2. The Court of Criminal Appeals shall take appropriate action to ensure that Petitioner receives the rights he is entitled to under Article 66 and Article 70, and issue such orders as are necessary to ensure timely filing of an Assignment of Errors and Brief on behalf of Petitioner and the timely filing of an Answer to the Assignment of Errors on behalf of the Government.

A review of the record of trial reveals the following chronology of events in this case:

- 01 Dec 2000 - the appellant was sentenced to 9 years confinement, total forfeitures, reduction to E-1, and a dishonorable discharge
- 26 Sep 2001 - 976 page record of trial authenticated
- 24 Oct 2001 - copy of record of trial mailed to the appellant
- 01 Nov 2001 - copy of record of trial received by the appellant

- 14 Nov 2001 - staff judge advocate's recommendation issued and served upon trial defense counsel
- 14 Dec 2001 - R.C.M. 1105 and 1106 matters submitted by trial defense counsel
- 21 Dec 2001 - Convening Authority's Action approves the adjudged sentence
- 25 Feb 2002 - record of trial received by Navy-Marine Corps Appellate Review Activity
- 28 Feb 2002 - case docketed by Navy-Marine Corps Court of Criminal Appeals
- 12 Mar 2002 - LT Snyder assigned as appellate defense counsel (as per Nautilus I)
- 25 Jun 2002 - First defense enlargement of time request
- 31 Jul 2002 - Second defense enlargement of time request
- 18 Oct 2002 - Third defense enlargement of time request
- 06 Nov 2002 - LT Snyder filed Motion for Appropriate Relief seeking appellant's release from confinement until appellate review is complete in his case or until a Petition for Extraordinary Relief being drafted by the appellant is resolved. "Appellant requests this relief on the grounds his appellate counsel has a conflict of interest because Appellant believes it is in his best interest for his case to be reviewed now, however, due to his appellate counsel's case load, she has not yet completed appellate review of his case and does not believe that she will do so anytime in the near future."
- 14 Nov 2002 - the appellant's Motion for Appropriate Relief denied
- 20 Nov 2002 - Fourth defense enlargement of time request
- 03 Dec 2002 - LT Snyder files a Petition for Extraordinary Relief drafted personally by the appellant

- 04 Dec 2002 - the appellant's Petition for Extraordinary Relief denied without prejudice to raise the same issues during the course of normal appellate review. "The Court notes petitioner's expressed concern with post-trial and appellate delay in his case, which is currently awaiting his brief and assignments of error as the next step in the appellate review process."
- 13 Dec 2002 - the appellant personally filed a Motion for Appropriate Relief seeking "deferment of his sentence and . . . release from confinement until completion of his appeal."
- 16 Dec 2002 - the Motion for Appropriate Relief denied without prejudice to raise the same issues during the course of normal appellate review. "The Court notes petitioner's expressed concern with post-trial and appellate delay in his case, which is currently awaiting his brief and assignments of error as the next step in the appellate review process."
- 14 Jan 2003 - Fifth defense enlargement of time request
- 03 Feb 2003 - LT Snyder filed a Motion Out of Time to Reconsider Appellant's Motion for Appropriate Relief
- 06 Feb 2003 - Sixth defense enlargement of time request
- 11 Feb 2003 - the Motion to Reconsider denied
- 24 Feb 2003 - Seventh defense enlargement of time request
- 19 Mar 2003 - Eighth defense enlargement of time request
- 23 Apr 2003 - Ninth defense enlargement of time request
- 21 May 2003 - Tenth defense enlargement of time request
- 20 Jun 2003 - Eleventh defense enlargement of time request
- 25 Jul 2003 - Twelfth defense enlargement of time request

24 Aug 2003 - Current due date for defense assignment
of errors and brief

Accordingly, it is, by the Court, this 14th day of August
2003,

ORDERED:

That the appellant's current appellate defense counsel (LT Kisor) and his supervisor in this case, along with appellate Government counsel and the Division Director, Appellate Government Division, or her representative, will appear in the chambers of the Chief Judge of this Court at 1000, 20 August 2003, to discuss the status of this case and establish a firm briefing schedule.



For the Court

R.H. TROIDL
Clerk of Court
14 August 2003

UNITED STATES NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee

v.

Salvador DIAZ
098 48 7391
Chief Fire Controlman (E-7)
U.S. Navy

Appellant

NMCCA No. 200200374

GENERAL COURT-MARTIAL

O R D E R

Following a chambers conference with counsel and their supervisors to discuss the status of this case and establish a firm briefing schedule, it is, by the Court, this 22nd day of August 2003,

ORDERED:

1. That appellate defense counsel will file a brief and assignment of errors in this case with the Court on or before 21 October 2003.
2. That appellate defense counsel will personally contact the appellant and inform him of this filing deadline and further inform the appellant that he should inform counsel of any issues he wishes raised before this Court not later than 21 September 2003.
3. That the Government will file its answer on or before 21 November 2003.
4. That absent extraordinary circumstances and good cause shown, enlargements of time beyond the newly established due dates will not be granted.

For the Court

R.H. TROIDL
Clerk of Court
22 August 2003

