

IN THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

UNITED STATES,)	REPLY TO APPELLEE'S
<i>Appellant,</i>)	ANSWER
)	
v.)	Crim. App. No. 37897
)	
Technical Sergeant (E-6))	USCA Dkt. No. 14-5003/AF ¹
JIMMY L. WILSON, USAF)	
<i>Appellee.</i>)	

**TO THE HONORABLE, THE JUDGES OF
THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES**

COMES NOW the United States, and pursuant to Rule 19 of this Honorable Court's Rules of Practice and Procedure, submits this reply to Appellee's Answer to the United States' Brief in Support of the Issue Certified.

ISSUE CERTIFIED

WHETHER ARTICLE 12, UCMJ, APPLIES TO THE CIRCUMSTANCE WHERE AN ACCUSED AND/OR CONVICTED MEMBER OF THE ARMED FORCES IS CONFINED IN IMMEDIATE ASSOCIATION WITH FOREIGN NATIONALS IN A STATE OR FEDERAL FACILITY WITHIN THE CONTINENTAL LIMITS OF THE UNITED STATES.

STATEMENT OF THE CASE

The government adopts the statement of the case contained within the brief in support of the issue certified, dated 31 March 2014. Additional details necessary to the disposition of this issue are set forth in the argument below.

¹Appellee's Answer erroneously lists this Court's docket number at 13-0157/AF.

STATEMENT OF FACTS

The government adopts the statement of facts contained within the brief in support of the issue certified, dated 31 March 2014.

ADDITIONAL ARGUMENT

Law and Analysis

Appellee's Answer requests "this Court decline to address the certified issue because it calls on this Court to issue an advisory opinion." (App. Br. at 2.) This contention is inaccurate.

On 11 December 2012, Appellee filed initial petition and supplement with this Court. In response to the petition, this Honorable Court remanded Appellee's case back to the Air Force Court of Criminal Appeals (AFCCA) to consider the following specified issue:

WHETHER ARTICLE 12, UCMJ, APPLIES TO CIRCUMSTANCES WHERE AN ACCUSED AND/OR CONVICTED MEMBER OF THE ARMED FORCES IS CONFINED IN IMMEDIATE ASSOCIATION WITH FOREIGN NATIONALS IN A STATE OR FEDERAL FACILITY WITHIN THE CONTINENTAL LIMITS OF THE UNITED STATES; AND, WHETHER THE RECORD IN THIS CASE PERMITS SUCH A CONCLUSION TO BE DRAWN WITHOUT THE NECESSITY OF FURTHER FACT-FINDING.

(J.A. at 4.) On 30 January 2014, in a published decision, AFCCA determined that Article 12 did apply to "members of the armed forces 'everyplace,' to include confinement facilities within

the continental United States. United States v. Wilson, 73 M.J. 529 (A.F. Ct. Crim. App. 2014)(J.A. at 5.) This published decision conclusively established Article 12 applicability to civilian confinement facilities as a matter of Air Force law.

As part of Appellee's original appeal, he argued that his confinement in an isolation cell to avoid Article 12 violations "constituted cruel and unusual punishment." (Pet. Supp. #1 at 6.)² In his second Supplement, Appellee pivoted his position and claimed his confinement violated Article 58 and increased his punishment. (Pet. Supp. #2.) But, Appellee continued to also assert that Article 12 was applied to him when his punishment was allegedly increased "solely to prevent a possible Article 12 violation." (Pet. Supp. #2 at 7.) Appellee's shifting claim about Article 12 applicability is regrettable but should not affect this Court's analysis.

Regardless, all of these issues implicate Article 12, UCMJ, as the basis of his confinement in an isolation cell, and cannot be resolved without addressing the interplay between Article 12, Article 58 and confinement in general. As a matter of fact, the substantial focus of the United States' brief in support of the certified issue involves the disharmony created by Article 12 and Article 58. Therefore, an analysis of Article 12 is

² Appellee filed his first Supplement on 11 December 2012. Appellee filed his second Supplement on 21 April 2014. In order to avoid confusion between these two filings, they will be referred to as "Pet. Supp. #1" and "Pet. Supp. #2" respectively.

unavoidable and implicated in Appellee's case.

Last, in as much as Appellee would like to consider any subsequent opinion of this Court as an "advisory opinion," it is inconceivable that this Court was seeking to have AFCCA issue an advisory opinion in its place when it originally remanded this very issue for AFCCA's consideration. This Court saw both the applicability of Article 12 to Appellee's case as well as the lack of issue development in AFCCA's original decision. (J.A. at 1.) The certification of this issue is merely the mechanism necessary to bring an issue this Court already determined to be important (and not advisory) back to this Honorable Court for their final consideration.

CONCLUSION

WHEREFORE, the United States respectfully requests this Honorable Court hold that Article 12 does not apply to civilian confinement facilities within the United States and affirm Appellant's sentence without modification.



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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Appellate Defense Division on 1 May 2014.



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