

30 April 2014

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ARMED FORCES

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UNITED STATES,  
*Appellant/Cross-Appellee,*

v.

JIMMY L. WILSON,  
Technical Sergeant (E-6), USAF  
*Appellee/Cross-Appellant.*

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Crim. App. No. 37897 (rem)  
USCA Dkt. No. 13-0157/AF

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***ANSWER TO THE CERTIFIED ISSUE***

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IN THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

UNITED STATES,	)	ANSWER TO THE CERTIFIED ISSUE
<i>Appellant/Cross-Appellee,</i>	)	
	)	
v.	)	Crim. App. Dkt. No. ACM 37897
	)	(rem)
Technical Sergeant (E-6)	)	
<b>JIMMY L. WILSON,</b>	)	USCA Dkt. No. 13-0157/AF
USAF,	)	
<i>Appellee/Cross-Appellant.</i>	)	
	)	

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

**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 UNITED STATES.

**Statement of Statutory Jurisdiction**

The Air Force Court of Criminal Appeals (AFCCA) reviewed this case pursuant to Article 66(c), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(c). This Honorable Court has jurisdiction to review an issue certified pursuant to Article 67(a)(2), UCMJ, 10 U.S.C. § 867(a)(2).

**Statement of the Case**

The Government's statement of the case is accepted.

**Statement of Facts**

The facts necessary to the resolution of the matter are included in the argument below.

**Argument**

THIS COURT SHOULD DECLINE TO ADDRESS THE CERTIFIED ISSUE BECAUSE THERE IS NO JUSTICIABLE CASE OR CONTROVERSY PROPERLY BEFORE THE COURT AND WILL ONLY SERVE TO ELICIT AN ADVISORY OPINION.

*Standard of Review*

"Courts established under Article III of the Constitution may not issue advisory opinions. . . . Courts established under Article I of the Constitution, such as this Court, generally adhere to the prohibition on advisory opinions as a prudential matter." *United States v. Chisholm*, 59 M.J. 151, 152 (C.A.A.F. 2003).

*Law and Analysis*

"An advisory opinion is an opinion issued by a court on a matter that does not involve a justiciable case or controversy between the parties." *Id.* TSgt Wilson has never raised an allegation that Article 12, UCMJ, was violated. In fact, TSgt Wilson, through counsel, conceded that Article 12 was not violated in his case. *United States v. Wilson*, 73 M.J. 529, 534 n.3 (A.F. Ct. Crim. App. 2014). Thus, the specified issue does not involve a justiciable case or controversy between the parties.

**WHEREFORE**, Appellee respectfully requests this Court decline to address the certified issue because it calls on this Court to issue an advisory opinion.

Respectfully Submitted,



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Counsel for Appellee

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was electronically mailed to the Court and to the Director, Air Force Government Trial and Appellate Counsel Division, on 30 April 2014.



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