

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES**

AMT2 H.V.,)	
Appellee,)	
)	
v.)	
)	
)	
)	
)	
Cassie A. Kitchen)	APPELLEE'S BRIEF ON WHETHER
Commander, US Coast Guard,)	CAAF HAS JURISDICTION OVER A
Respondent Below,)	WRIT-APPEAL PETITION BY AN
)	ACCUSED SEEKING REVIEW OF A
)	COURT OF CRIMINAL APPEALS'
)	DECISION RENDERED PURSUANT TO
)	ARTICLE 6b(e), UCMJ
)	
)	USCA Dkt. No. 16-0678/CG
)	
and)	
)	
)	
)	
Thomas Randolph,)	Crim. App. Misc. Dkt. No. 001-16
DC2/E-5, US Coast Guard,)	
Appellant.)	

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Appellant.)	30 September 2016
)	

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

Preamble

COMES NOW Aviation Maintenance Technician Second Class (AMT2) H.V., Appellee, by and through her undersigned Special Victims’ Counsel (SVC), and responds to the Court’s order to brief whether the Court has jurisdiction to hear the instant writ-appeal.

I. Facts and Procedural History

All relevant facts and procedural history were set out in the Appellee's Answer and are incorporated by reference in this Brief.

II. Relief Sought

Appellee seeks a determination from this Honorable Court regarding whether it will exercise jurisdiction of the Appellant's Writ-Appeal.

III. Issues Presented

WHETHER THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES HAS JURISDICTION OVER A WRIT-APPEAL PETITION FILED BY AN ACCUSED WHO IS SEEKING REVIEW OF A COURT OF CRIMINAL APPEALS' DECISION RENDERED PURSUANT TO ARTICLE 6B(E), UCMJ.

IV. Argument

THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES MAY EXERCISE JURISDICTION PURSUANT TO ARTICLE 67(a)(3) TO CONSIDER THE APPELLANT'S WRIT-APPEAL.

Although, as the Appellee noted in her Answer, the current rules and case law treat victims differently than an accused regarding their ability to obtain relief from this Court's for violation of their Article 6b rights, the Appellee recognizes that Article 67, UCMJ, provides an accused the ability to seek review of adverse decisions through writ-appeal pursuant to Art 67(a)(3). Jurisdiction does not depend upon whether the decision may affect the victim or the accused.

Additionally, there are no limitations in Articles 6b or 67, UCMJ, that restrict an accused from petitioning this Court for a review of a lower court's decision under Article 6b, UCMJ. Consequently, under Art 67(b), the Appellant has a legal right to petition the Court for review of the lower court's order that may affect the findings and sentencing of his case.

The response to the certified question does not rest on the issue upon which a lower court ruled but if the Appellant has a legal right to petition for review of a Court of Criminal Appeal's adverse order. This Court must determine whether the lower court's decision qualifies as a "case" and if it does, whether Article 67(b) authorizes the accused to bring the appeal in which this Court may consider. This Court has previously determined that it may review a Service Court's ruling on a petition for extraordinary relief certified by a Judge Advocate General pursuant to Art 67 in *US v Redding*, 11 M.J. 100, 1981. In *Redding*, the Court applied a two prong analysis whether it could review a Service Court of Criminal Appeal's decision regarding a ruling on a writ using two prongs; one, whether a decision regarding a writ-appeal qualified as a "case" and two, whether the Court could be the "reviewing authority." The Court answered both questions in the affirmative.

Additionally, in *Redding*, the Court found that when Service Courts of Criminal Appeal are empowered to provide extraordinary relief, then review by the Court of Military Appeals was necessary "as the means of achieving certainty in,

and uniformity of, interpretation of the Uniform Code in each armed force, as well as for all the armed forces.” *Id.* at 110.

In *U.S. v. Curtin*, 44 M.J. 439 (C.A.A.F. 1996) this Court relied upon *Redding* in considering the definition of a "case" as used in Article 67(a)(2), UCMJ. In *Curtin*, the military judge ruled that trial counsel's subpoenas *duces tecum* for the financial statements of the accused's wife and her father were administrative, and that the appropriate United States district court was the proper forum for challenging the subpoenas. *Id.* at 440. The government filed a certificate for review of a CCA decision denying the government's petition for extraordinary relief in the form of a writ of mandamus. *Id.* This Court held that it had jurisdiction, and determined that the "definition of 'case' as used within that statute includes a 'final action' by an intermediate appellate court on a petition for extraordinary relief." *Id.* (citing *United States v. Redding*, 11 M.J. 100, 104 (C.M.A. 1981)).

In accordance with the above cases and Article 67(b) this Court is authorized to review a “case” brought by an accused pursuant to Article 6b, UCMJ, who has shown good cause.¹

¹ However, Appellee respectfully invites this Court to re-visit its decision in *EV v. United States & Martinez*, 75 M.J. 331 (C.A.A.F. 2016), ultimately finding this Court, pursuant to the All Writs Act, 28 U.S.C. sec 1651 (2012), has the authority to grant mandamus and other extraordinary writs, regardless of whether the requestor is the accused or victim, in actions initiated under Article 6b, UCMJ.

V. Conclusion

For the reasons stated above, Appellee, through her Special Victims' Counsel, respectfully answers the legal question of whether this Court may exercise jurisdiction in the affirmative.

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CERTIFICATE OF FILING AND SERVICE

I certify that the foregoing Appellee's Brief was sent via electronic mail to the Clerk's Office on the 30th day of September 2016. Copies were sent by electronic mail to the Government Appellate Division, Defense Appellate Division, defense counsel (LT Jason Roberts), trial counsel (CDR Michael Fazio), and respondent (CDR Cassie A. Kitchen) on the 30th day of September 2016.

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