

**United States Court of Appeals
for the Armed Forces
Washington, D.C.**

United States,
Appellee

USCA Dkt. No. 20-0301/MC
Crim.App. No. 201800327

v.

ORDER

Guillermo
Cabrera,
Appellant

On consideration of the petition for grant of review of the decision of the United States Navy-Marine Corps Court of Criminal Appeals, the motion to remand for factfinding, and the motion to supplement the record, it is, by the Court, this 28th day of October, 2020,

ORDERED:

That said petition is hereby granted on the following issues:

AFTER GOVERNMENT DISCOVERY VIOLATIONS RESULTED IN A MISTRIAL, WAS APPELLANT'S SECOND TRIAL PROHIBITED BY RULE FOR COURTS-MARTIAL 915(c)(2)(A) AND THE DOUBLE JEOPARDY CLAUSE OF THE FIFTH AMENDMENT?

DID LTCOL KASPYRZK'S SUBSTANTIVE PARTICIPATION IN APPELLANT'S CASE WHILE SIMULTANEOUSLY ALLEGEDLY APPLYING FOR EMPLOYMENT TO SERVE AS THE PROSECUTION'S EXPERT ADVISOR UNDERMINE THE PUBLIC'S CONFIDENCE IN THE JUDICIAL PROCESS?

WERE THE TRIAL AND APPELLATE DEFENSE COUNSEL INEFFECTIVE WHERE THEY FAILED TO FILE A MOTION TO COMPEL THE GOVERNMENT TO PRODUCE REQUESTED DISCOVERY REGARDING LTCOL KASPYRZK'S ALLEGED CONFLICT OF INTEREST AND FAILED TO RAISE THE ISSUE ON APPEAL?

That the motion to remand for factfinding is granted in part as noted below;

That the motion to supplement the record is granted; and

That the decision of the United States Navy-Marine Corps Court of Criminal Appeals is set aside. The record of trial is returned to the Judge Advocate General of the Navy for remand to that court for further appellate inquiry of the granted issues. The Court of Criminal Appeals will obtain affidavits from the trial defense counsel (military and civilian) and initial appellate defense counsel (military and civilian) that respond to Appellant's allegation of ineffective assistance of counsel. Under Article 66(c), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(c) (2012), the Court of Criminal Appeals shall review the granted issues in light of the affidavits and any other relevant matters. See *United States v. Ginn*, 47 M.J. 236 (C.A.A.F. 1997). If the court determines that a factfinding hearing is necessary to resolve any of the granted issues, that court shall order a hearing pursuant to *United States v. DuBay*, 17 C.M.A. 147, 37 C.M.R. 411 (1967). Once the necessary information is obtained, the court will complete its Article 66(c), UCMJ, review. Thereafter, Article 67, UCMJ, 10 U.S.C. § 867 (2012), shall apply.

For the Court,

/s/ Joseph R. Perlak
Clerk of the Court

cc: Judge Advocate General of the Navy
Appellate Defense Counsel (Grzincic)
Appellate Government Counsel (Fiveson)