

The State of South Carolina
Military Department



R. VAN MCCARTY
MAJOR GENERAL
THE ADJUTANT GENERAL

OFFICE OF THE ADJUTANT GENERAL
1 NATIONAL GUARD ROAD
COLUMBIA, S. C. 29201-4766

RECEIVED

MAR 27 2019

March 27, 2019

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

RE: The State, Appellant v. SSG Jared A. Waring, Respondent, Case No. 1-SCCMJ-01

Dear Mr. Shearouse:

Enclosed for filing is an Amended Notice of Appeal in the above-referenced case. The original Notice of Appeal included an incorrect statutory reference to Section 14-8-200(a)(3) and the reference should have been to Section 14-8-200(b)(3) of the South Carolina Code. The reference has been corrected in the amended notice.

Also, the Military Judge's decision which is the subject of the present appeal has now been reduced to writing after the filing of the original Notice of Appeal and is also attached.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael R. Hitchcock".

Michael R. Hitchcock, MAJ, JA
1 National Guard Road
Columbia, South Carolina 29201
(803) 299-2671
Attorney for Appellant

cc: MAJ Matthew Pinckney, Attorney for Respondent
Mr. Charles Grose, Attorney for Respondent

**AMENDED NOTICE OF APPEAL BY THE STATE OF A MILITARY
JUDGE'S RULING IN A SPECIAL COURT MARTIAL**

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM A SPECIAL COURT MARTIAL, SUPREME COURT
SOUTH CAROLINA MILITARY DEPARTMENT

LTC Lawrence K. Wedekind, Military Judge

Case No. 1-SCCMJ-01

The State,

Appellant,

v.

SSG Jared A. Waring,

Respondent.

AMENDED NOTICE OF APPEAL

The State, by and through its undersigned counsel, appeals the decision of LTC Lawrence K. Wedekind, Military Judge, in the above-referenced case in which he ruled Section 25-1-2770 of the South Carolina Code of Military Justice unconstitutional. Judge Wedekind denied the State's timely Motion for Reconsideration on March 18, 2019. The decision is immediately appealable pursuant to Section 14-3-330(2) of the South Carolina Code and is directly appealable to the Supreme Court pursuant to Section 14-8-200(b)(3) of the South Carolina Code.

March 27, 2019



Michael R. Hitchcock, MAJ, JA
John W. Cummings, III, MAJ, JA
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(803) 299-2671
Attorneys for Appellant

Other Counsel of Record:

MAJ Matthew Pinckney
414-B Monument Street
Greenwood, SC 29648
(864) 538-6528
Attorney for Respondent

Mr. Charles Grose
404 Main Street
Greenwood, SC 29646
(864) 538-4466
Attorney for Respondent

The State maintained that Federal law and procedure was controlling. Since the Uniform Code of Military Justice (UCMJ) allowed for three panel members than by extension the SC Military Code could do so.

SECOND ISSUE PRESENTED

Defendant argued that Section 25-1-2770 was unconstitutional in that it allowed the State to obtain a guilty verdict with a majority vote of two-thirds of the panel members in lieu of the requirement of a unanimous vote under Article V, Section 22 S.C. Constitution, which states, "All jurors in any trial court must agree to a verdict in order to render the same." (S.C. Const., Art. V, Sec. 22)

The State again maintained that Federal law and procedure were controlling and that since the South Carolina Constitution was ratified before the passage of Title 25 the presumption should be that the Legislature knew of Article V, Section 22 but that they had opted to follow the model established by the UCMJ.

RULINGS

After review of both written motions and oral arguments, the Court announced its initial rulings. First that Section 25-1-2530 was constitutional. Not because the UCMJ is controlling, as Federal Military Courts do not have to consider or obey the South Carolina Constitution. The Military Courts-Martial of South Carolina are created and established by the Legislature and are subject to the supremacy of the South Carolina Constitution. While they are equivalent in some respects to a Circuit Court such as authority, they are not identical. To touch upon a few distinctions, there is a requirement that all the members of the Court, including the panel, the prosecution, judge and at least one defense attorney, if used, must be members of the South Carolina National Guard. Additionally, there must be some connection to the Military

Department of South Carolina for there to be jurisdiction over a defendant. There are no established facilities for trials such as court rooms, reporters, or a Clerk of Court for Courts-Martial. The offenses set forth in Title 25 of the South Carolina Military Code are different in scope, nature and punishment making them unique and distinct from what the Circuit Court may apply to criminal offenses. Simply put the Military Courts-Martial are not Circuit Courts. Therefore the provisions of S.C. Constitution Article V, Section requiring twelve jurors for Circuit Court are not applicable to Section 25-1-2530. It is permissible under Article V, Section 22 for the panel of jurors to be as low as three because a Special Military Courts-Martial is a creation of legislation and as the Constitution states, "the number of jurors of other courts must be determined by law..." (S.C. Constitution, Art. V, Sec. 22). Just as Magistrates and Municipal Courts sit with six member juries, as directed by statute, so too can the Special Military Courts-Martial be comprised with a statutorily directed minimum of three.

The Defense raised an objection to the Courts ruling and preserved the issue for appeal, but did not see the issue as interlocutory. The State raised no objection.

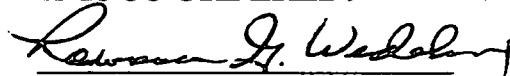
The second issue presented was ruled upon orally and is now put into written form. S.C. Code 25-1-2770 provides that in Military Courts-Martial a verdict of guilty can be obtained by a two thirds majority vote. This Court finds the statute is in violation of the S.C. Constitution, Article V, Section 22 which states, "All jurors in any trial court must agree to a verdict..." (*emphasis added*). In all other trial courts of South Carolina, Circuit, Magistrate and Municipal, there may be different numbers required to sit, but in all the juries must be unanimous to render a verdict. The Military Courts-Martial are a statutorily created trial court of South Carolina, as such they are subject to the language, "All jurors in any trial court must agree" (S.C. Const. Art. V, Sec. 22). There is no

additional language exempting the Military Courts-Martial or providing a different standard for rendering a verdict. Article I, Section 23 of the South Carolina Constitution states its provisions are mandatory.

The State in their Motion for Reconsideration cited Article I Section 21, Martial Law, (S.C. Const.) as evidence that the Legislature knew of Article V, Section 22 when creating the Military Courts-Martial and it was their intent to emulate the Federal Military Courts. There is no dispute that the Legislature knew of the Military Courts-Martial as they created the court in Title 25 of the S.C. Code. And it appears to have been the intent of the Legislature to emulate the Federal UCMJ in allowing for a lesser than unanimous verdict to convict. However, Article I, Section 23 is controlling, "The provisions of the Constitution shall be taken, deemed, and construed to be mandatory and prohibitory, and not merely directory, except where expressly made directory or permissive by its own terms." As noted above, there is no exception in the S.C. Constitution for the Military Courts-Martial to be exempt from the trial court requirement to obtain a unanimous verdict.

As a result of this ruling the Defense did not make an objection. The State renewed its objection and further stated that they deemed that they would not have the opportunity to have the issue resolved on appeal after trial, as a consequence they filed the instant interlocutory appeal.

IT IS SO ORDERED.



LTC Lawrence G. Wedekind, JA
S.C. Military Judge

Columbia, South Carolina
Dated this 25th day of March, 2019

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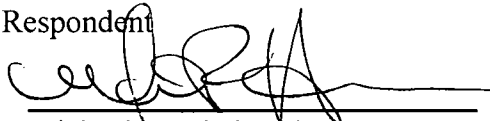
PROOF OF SERVICE

I certify that I have served the Amended Notice of Appeal in the above referenced case by depositing a copy of it in the United States Mail, postage prepaid, on March 27, 2019, addressed to the other counsel of record below:

MAJ Matthew Pinckney
414-B Monument Street
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(864) 538-6528
Attorney for Respondent

Mr. Charles Grose
404 Main Street
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