

UNITED STATES NAVY-MARINE CORPS COURT OF MILITARY REVIEW

United States v. Brown

11 M.J. 769 (N.C.M.R. 1981) · Decided June 30, 1981

SUMMARY

The court held that the special court-martial had personal jurisdiction over the accused despite the expiration of his active-service date before preferral and referral of the charges. It concluded that the battalion commander’s award of a special court-martial and placement of the accused on legal hold constituted sufficient affirmative action with a view toward trial, and affirmed the findings and sentence.

CASE DETAILS

COURT	United States Navy-Marine Corps Court of Military Review
WRITING FOR THE COURT	Gladis; Bohlen; Gregory
JURISDICTION	USA
DECIDED	June 30, 1981
DISPOSITION	affirmed
PROCEDURAL POSTURE	The accused appealed his special court-martial convictions and sentence, arguing that the court-martial lacked personal jurisdiction because sufficient action with a view to trial had not commenced before his adjusted expiration of active service.
PRECEDENTIAL VALUE	Published opinion
PARTIES	United States v. Brown

TOPICS

- court martial
- military law
- ucmj
- criminal procedure

PRACTICE AREAS

- military law
- criminal procedure

QUESTIONS PRESENTED

1. Whether the court-martial had personal jurisdiction over Brown when sufficient affirmative action with a view toward trial occurred before his adjusted expiration of active service.

2. Whether, even if the battalion commander's pre-expiration actions were insufficient, preferral and referral of charges shortly after Brown objected to continued retention could invoke personal jurisdiction.

HOLDINGS

1. The court-martial had personal jurisdiction because, before Brown's active service expired, the battalion commander awarded a special court-martial and informed Brown that he was being placed on legal hold pending disposition of the charges.
2. Even if the battalion commander's earlier actions were insufficient, the preferral and referral of the charge within a reasonable time after Brown objected to retention were each sufficient to invoke personal jurisdiction.

KEY QUOTATIONS

“A person subject to the Uniform Code of Military Justice continues in the service until the formalities of a discharge or release from active duty have been met, or he objects to his continued retention and a reasonable time expires without appropriate action by the Government.”

“It must be such that one can say that at some precise moment the sovereign had authoritatively signalled its intent to impose its legal processes upon the individual.”

FACTUAL BACKGROUND

An NIS investigation began on August 10, 1979, and Brown was advised of the suspected offenses at an Article 15 hearing on September 7. On September 11, the battalion commander awarded a special court-martial and placed Brown on legal hold pending disposition of the charges. Brown's adjusted expiration of active service date was October 10, 1979; he objected to continued retention on that date. The charge was preferred on October 18 and referred to a special court-martial on October 23.

PROCEDURAL HISTORY

Brown was convicted by a special court-martial composed of officer members of wrongful sale, transfer, and possession of phencyclidine in violation of Article 92, UCMJ. The convening and supervisory authorities approved the findings and sentence. The Navy-Marine Corps Court of Military Review affirmed.

DISPOSITION

affirmed

CASES CITED

- United States v. Wheeley, 6 M.J. 220 (C.M.A. 1979)
- United States v. Hutchins, 4 M.J. 190 (C.M.A. 1978)
- United States v. Smith, 4 M.J. 265 (C.M.A. 1978)
- United States v. Gunter, 1 M.J. 1039 (N.C.M.R. 1976)

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