

UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

United States v. Ivey

55 M.J. 251 (2001) · No. No. 00-0702/AR · Decided July 30, 2001

SUMMARY

The United States Court of Appeals for the Armed Forces affirmed Sergeant Gerald P. Ivey’s convictions and sentence arising from drug-trafficking conspiracies and firearms offenses. The court held that a convening authority was not required to forward a civilian witness immunity request to the Attorney General when the authority intended to deny it, and that any processing error was harmless. The court also held that the military judge did not abuse his discretion in refusing to abate the proceedings because the requirements for compelled testimonial immunity under RCM 704(e) were not met.

CASE DETAILS

COURT	United States Court of Appeals for the Armed Forces
WRITING FOR THE COURT	Gierke, J.; Crawford, C.J.; Sullivan, J.; Effron, J.; Baker, J.
JURISDICTION	USA
DECIDED	July 30, 2001
DOCKET	No. 00-0702/AR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal by a service member from the decision of the United States Army Court of Criminal Appeals affirming most findings of guilty and reassessing and affirming the sentence after setting aside one firearm-related conviction.
STANDARD OF REVIEW	The denial of a motion to abate proceedings is reviewed for abuse of discretion; factual findings are reviewed for clear error; and legal conclusions are reviewed de novo. Any error in failing to process the immunity request was reviewed for harmlessness under whether it had a substantial influence on the findings.
PRECEDENTIAL VALUE	binding
PARTIES	Gerald P. Ivey, Sergeant, U.S. Army v. United States

TOPICS

military law

criminal procedure

due process

sixth amendment

PRACTICE AREAS

military law

criminal procedure

constitutional law

QUESTIONS PRESENTED

1. Whether a general court-martial convening authority must forward a defense request for immunity for civilian witnesses to the Attorney General when the convening authority intends to deny the request.
2. Whether the Government improperly failed to process Ivey's immunity request by not presenting it to the convening authority before trial.
3. Whether the military judge abused his discretion by refusing to abate the proceedings or grant related relief under RCM 704(e).
4. Whether the handling of the immunity request violated Ivey's Fifth Amendment due process rights or Sixth Amendment right to present a defense.

HOLDINGS

1. A convening authority is not required to forward a request for immunity for a person not subject to the UCMJ to the Attorney General when the convening authority intends to deny the request.
2. RCM 704(c)(3) requires that all immunity requests be submitted to the convening authority for a decision; a trial counsel or staff judge advocate may not effectively deny a request by withholding it from the convening authority. Any failure to present the request before trial was harmless in this case.
3. The military judge did not abuse his discretion by denying abatement because the defense failed to satisfy all three requirements of RCM 704(e), including the requirement of Government discriminatory use of immunity or overreaching and the requirement that the proposed testimony be clearly exculpatory.
4. The denial and handling of the requested immunity did not violate Ivey's Fifth Amendment due process rights or Sixth Amendment right to present a defense.

KEY QUOTATIONS

"Therefore, we hold that the convening authority was not required to forward the request to the Attorney General." (55 M.J. at 260)

"We hold that he did not." (55 M.J. at 263)

FACTUAL BACKGROUND

Ivey was charged with conspiracies involving marijuana and cocaine transactions and with numerous firearm offenses. Before trial, the defense requested immunity for four civilian witnesses who allegedly would provide exculpatory testimony, but the request was not forwarded to the Judge Advocate General or the Attorney General, and the military judge denied a motion to abate the proceedings. The prosecution relied primarily on physical and documentary evidence, recordings, law-enforcement testimony, and testimony from informants and

other witnesses; only one prosecution witness received immunity and that witness repeatedly testified that Ivey was not involved in the charged conspiracies.

PROCEDURAL HISTORY

A general court-martial convicted Ivey of conspiracy, controlled-substance, firearm, and assimilated federal firearm offenses and sentenced him to a dishonorable discharge, fifteen years' confinement, total forfeitures, and reduction to the lowest enlisted grade. The convening authority approved the sentence. The Army Court of Criminal Appeals set aside one conviction, affirmed the remaining findings, and reassessed and affirmed the sentence. The Court of Appeals for the Armed Forces granted review concerning the Government's handling of defense requests for immunity for four civilian witnesses and affirmed.

DISPOSITION

affirmed

CASES CITED

- United States v. Richter, 51 M.J. 213, 223 (1999)
- United States v. Smith, 53 M.J. 168, 170 (2000)
- United States v. White, 48 M.J. 251, 257 (1998)
- United States v. Wean, 45 M.J. 461, 463 (1997)
- United States v. Pablo, 53 M.J. 356, 359 (2000)
- United States v. Pollard, 38 M.J. 41, 52 (CMA 1993)
- Kotteakos v. United States, 328 U.S. 750, 765 (1946)