

Wednesday, 2 June 2010

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United States v. Sagona

The appellant was convicted by a military judge sitting as a special court-martial, pursuant to his pleas, of wrongful use of marijuana and larceny, in violation of Articles 112a and 121, UCMJ, 10 U.S.C. §§ 912a and 921. He was sentenced to 180 days of confinement, forfeiture of \$898 pay per month for six months, a bad-conduct discharge and a letter of reprimand. The appellant argues that he had *de facto* immunity and was protected from punitive discharge based on a written agreement he had made with his command sergeant major, who represented that he had the authority to make such an agreement. Although the appellant and the command sergeant major retained copies of this agreement, all copies disappeared before the appellant's court-martial. The issue to be argued before the court is:

WHETHER THE GOVERNMENT OR THE APPELLANT BEARS THE
BURDEN OF PRODUCING THE AGREEMENT CENTRAL TO THE
APPELLANT'S DE FACTO IMMUNITY CLAIM, AND, IF
THE GOVERNMENT BEARS THIS BURDEN, WHETHER THE LOSS
OF THIS DOCUMENT CONSTITUTES A DUE-PROCESS VIOLATION.