

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

February 2, 2012

Elisabeth A. Shumaker
Clerk of Court

FRANK PACHECO,
Petitioner–Appellant,

v.

COMMANDANT, USDB,
Respondent–Appellee.

No. 11-3301
(D.C. No. 5:09-CV-03256-RDR)
(D. Kan.)

ORDER AND JUDGMENT*

Before **LUCERO, ANDERSON, and GORSUCH**, Circuit Judges.

Frank Pacheco, a federal military prisoner proceeding pro se, appeals the district court’s denial of his 28 U.S.C. § 2241 habeas petition. Exercising jurisdiction under 28 U.S.C. §§ 1291 and 2253, we affirm.

I

Pacheco was court martialled for crimes resulting from his sexual abuse of his step-

* The case is unanimously ordered submitted without oral argument pursuant to Fed. R. App. P. 34(a)(2) and 10th Cir. R. 34.1(G). This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 32.1.

daughter. He pled guilty to forcible sodomy and commission of indecent acts on a child under the age of twelve. The military judge also found him guilty of another charge of attempted forcible sodomy. Pacheco was sentenced to a bad-conduct discharge, a reduction in grade, and 22 years' imprisonment.

Assisted by new counsel, Pacheco appealed to the Army Court of Criminal Appeals and then the Court of Appeals for the Armed Forces. One of the arguments he pressed on appeal was that his trial counsel was ineffective for failing to advise him that a review board found he suffered from a mental disease or defect. Both courts found this argument unavailing and summarily affirmed the judgment and sentence of the court martial.

II

Our habeas review of military proceedings is strictly limited. If the military courts have given full and fair consideration to the claims asserted in the habeas petition, we cannot consider the merits and must deny the petition. Lips v. Commandant, U.S. Disciplinary Barracks, 997 F.2d 808, 811 (10th Cir. 1992). We generally assume that that the military has fully and fairly considered an issue if it has been briefed, even if the military court summarily rejects the petitioner's arguments. See id. at 812 n.2.

III

Pacheco's sole habeas claim is that his trial counsel was ineffective for failing to advise him of the results of the mental health review. He has already presented this claim, with the aid of new counsel, to two military courts of review. In the absence of

any evidence to the contrary, we conclude that his claim was given full and fair consideration. Thus, we lack authority to evaluate his claim on the merits.

IV

AFFIRMED.

Entered for the Court

Carlos F. Lucero
Circuit Judge