No. 11682

United States
Circuit Court of Appeals
For the Ninth Circuit

MATTHEW WRUBLEWSKI,

Appellant,

vs.

CAPTAIN S. X. McINERNEY,
Commanding Officer of United States Naval Receiving Station, Yerba Buena Island, San Francisco, California, and Rear Admiral D. B. Beary, United States Navy, Commandant 12th Naval District, San Francisco, California.

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division

Rotary Colorprint, 870 Brannan Street, San Francisco 9-5-47—60

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

NAMES AND ADDRESSES OF ATTORNEYS

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On appeal from the United States District Court for the Northern District of California, Southern Division.

Decision of the Honorable Louis E. Goodman, District Judge.

In the District Court of the United States, Northern District of California, Southern Division

No. 26862-G

In the Matter of

MATTHEW WRUBLEWSKI, Ensign, U. S. N., Petitioner.

PETITION FOR WRIT OR HABEAS CORPUS

To the Honorable, the Judge the United States District Court, Northern District of California, Southern Division:

Now comes petitioner and files this his petition for a writ of habeas corpus and alleges as follows, to-wit:

I.

That petitioner is a citizen of the United States of America and is of the age of 25 years. [1*]

II.

That petitioner is illegally detained, unlawfully imprisoned, confined and restrained of his liberty at the United States Naval Receiving Station, Yerba Buena Island, San Francisco, California, which said naval station is under the command of Captain S. X. McInerney, commanding officer of said station, and Rear Admiral D. B. Beary, United States Navy, Commandant, 12th Naval District, San Francisco, California; that said station wherein your petitioner is now confined is located in the County of San Francisco, within this district; that

* Page numbering appearing at foot of page of original certified Transcript of Record.

such detention, confinement, restraint and imprisonment and each of such acts is unlawful, illegal and without authority of law for the reasons hereinafter set forth:

That petitioner is an officer of the regular Navy, Ensign, U.S.N., having enlisted in the naval service of the United States on September 12, 1939, as an apprentice seaman; that petitioner has served continuously, honorably, efficiently, and dangerously throughout World War II as a combat pilot in the Naval Air Corps; that petitioner was commissioned as an ensign in the regular navy in August of 1943, after serving four years as an enlisted man with a conduct record free from blemish; that all marks received by petitioner in his naval career from September, 1939, until August, 1944, were never less than 3.5 out of a possible 4.0 perfect rating in conduct, proficiency in rating, seamanship, mechanical ability and ability as a leader of men.

That on or about December 11, 1944, petitioner was duly tried before a naval general court martial convened by the Commandant, 14th Naval District, Pearl Harbor, Territory of Hawaii, for the following offenses: (1) Murder

"In that Matthew Wrublewski, Ensign, U. S. Navy, while so serving with patrol squadron two hundred, Fleet Air Wing Two, U. S. Pacific Fleet, did, on or about August 7, 1944, at the U. S. Naval Air Station, Kaneohe Bay, Oahu, Territory of Hawaii, wilfully, feloniously, with malice aforethought, and without justifiable cause, assault,

shoot at, [2] and strike with a bullet fired by him, the said Wrublewski, from a deadly weapon, to-wit, from a loaded Smith and Wesson revolver, calibre thirty-eight, one Roland F. Travis, lieutenant (junior grade), U. S. Naval Reserve, and did therein and thereby then and there inflict a mortal wound in and upon the chest of the said Travis, of which said mortal wound so inflicted, as aforesaid, the said Travis died at or about 7:15 p.m., on August 7, 1944, the United States then being in a state of war."

(2) Assault with intent to commit murder

Specification I

"In that Matthew Wrublewski, Ensign, U. S. Navy, while so serving with patrol squadron two hundred, Fleet Air Wing Two, U. S. Pacific Fleet, did, on or about August 7, 1944, at the U. S. Naval Air Station, Kaneohe Bay, Oahu, Territory of Hawaii, wilfully, maliciously, and without justifiable cause, assault with a revolver one Roland F. Travis, lieutenant (junior grade), U. S. Naval Reserve, with the intent in him, the said Wrublewski, to kill and murder the said Travis, the United States then being in a state of war."

Specification II

"In that Matthew Wrublewski, Ensign, U. S. Navy, while so serving with patrol squadron two hundred, Fleet Air Wing Two, U. S. Pacific Fleet, did, on or about August 7, 1944, at the U. S. Naval Air Station, Kaneohe Bay, Oahu, Territory of

Hawaii, wilfully, maliciously, and without justifiable cause, assault with a revolver, one Robert M. Nason, lieutenant (junior grade), U. S. Naval Reserve, with the intent in him, the said Wrublewski, to kill and murder the said Nason, the United States then being in a state of war."

Specification III

"In that Matthew Wrublewski, Ensign, U. S. Navy, while so serving with patrol squadron two hundred, Fleet Air Wing Two, U. S. Pacific Fleet, did, on or about August 7, 1944, at the U. S. Naval Air Station, Kaneohe Bay, Oahu, Territory of Hawaii, wilfully, maliciously, and without justifiable cause, assault with a revolver one Joseph A. Osborn, then lieutenant (junior grade), U. S. Naval Reserve, with the intent in him, the said Wrublewski, to kill and murder the said Osborn, the United States then being in a state of war."

Following said trial, the naval court found the accused guilty of the charge of murder and the specification thereunder proved; the same court acquitted the accused of the second charge of assault with intent to commit murder and found the words of the three specifications thereunder not proved.

That the naval court martial had no jurisdiction over the crime of murder, which alleged "murder" was "not committed [3] without the territorial jurisdiction of the United States" in that said alleged "murder" was not alleged to have been committed aboard a vessel of the United States on

the high seas; that despite the lack of jurisdiction of the court over the charge of murder and further despite the acquittal of the accused on the charge of assault with intent to commit murder, petitioner has been confined in various naval prisons both in the Pacific area and within the continental limits of the United States, continuously from August 7, 1944, and is still so confined as an officer prisoner at the United States Naval Receiving Station, Yerba Buena Island, San Francisco, California.

That on November 9, 1945, a letter was originated by the Judge Advocate General's office, Washington, D.C., to the Bureau of Naval Personnel, calling attention to the fact that the trial, proceedings, findings and sentence should be set aside as void for lack of jurisdiction over the crime. This letter, or "read-off," was made known to your petitioner on February 13, 1946, over 18 months after petitioner was placed in confinement; that following this review by the Judge Advocate General's office, which determined the illegality of the trial for murder and the sentence resulting therefrom, petitioner was not restored to duty as a naval officer, and was not released from confinement or prison, was not ordered to a new trial, and otherwise derived no benefit whatsoever from the decision by higher naval authority that his trial, the proceedings, findings and sentence were all void as to the first charge of murder from inception. Petitioner was then transferred to the United States Naval Hospital, Oakland, California, for "observation"

and was there confined in a prisoner status without the liberty to leave the building or to place a telephone call concerning his predicament. This period of observation resulted in petitioner being pronounced sane, sound, and fit for duty. Following a period of observation at [4] the United States Naval Hospital, Oakland, California, petitioner was transferred back to the navy prison from which he came and was confined as a regular convicted criminal. Petitioner was sentenced to ten years' imprisonment as a result of the herein mentioned void trial proceedings; that petitioner has already been imprisoned for over 30 months.

III.

That your petitioner, at his first opportunity, sought relief through the offices of the 12th Naval District to be transferred out of this prison to some quarters and duty more appropriate to an officer of the navy who had up to that time been convicted of nothing.

Your petitioner has through his counsel sought to derive some benefit from the application of the rule that petitioner is innocent at least until he walks into the Naval General Court Martial.

IV.

That on or about April 3, 1946, your petitioner was still confined as a convicted prisoner at the United States Naval Prison, Mare Island, California, petitioner was under no pending charges and was serving a "sentence" as the result of a

void trial and conviction of the charge of murder. Your petitioner sought relief in this honorable court on a petition of writ of habeas corpus. This action brought forth the charges and specifications by the Navy Department showing cause why petitioner was restrained. A charge of scandalous conduct tending to the destruction of good morals was then 1946. Your petitioner waited from that date until July 25, 1946, at which time the charge under which petitioner was being held was withdrawn by the Navy Department and new charges were finally preferred against petitioner, namely, voluntary manslaughter and a second charge, involuntary manslaughter, as herein [5] set forth:

Charge I

Voluntary Manslaughter

Specification

"In that Matthew Wrublewski, Ensign, U. S. Navy, while so serving with Patrol Squadron Two Hundred, Fleet Air Wing Two, U. S. Pacific Fleet, did, on or about 7 August 1944, at the U. S. Naval Air Station, Kanoehe Bay, Oahu, Territory of Hawaii, feloniously, wilfully, without justifiable cause, assault, shoot and strike with a bullet fired by him, the said Wrublewski, from a deadly weapon, to-wit, from a loaded Smith and Wesson thirty-eight calibre revolver, one Rowland F. Travis, lieutenant (junior grade), U. S. Naval Reserve, and did therein and thereby, then and there, inflict a mortal wound in and upon the chest of the

said Travis, of which said mortal wound so inflicted as aforesaid, the said Travis died at about 1915 on 7 August 1944; the United States then being in a state of war."

Charge II

Involuntary Manslaughter

Specification

"In that Matthew Wrublewski, Ensign, U. S. Navy, while so serving with Patrol Squadron Two Hundred, Fleet Air Wing Two, U. S. Pacific Fleet, having in his possession a loaded Smith and Wesson thirty-eight calibre revolver, and it being his duty to handle said revolver with due caution and circumspection, did, on or about 7 August 1944, at the U. S. Naval Air Station, Kanoehe Bay, Oahu, Territory of Hawaii, feloniously neglect and fail to handle said revolver with due caution and circumspection, in that he, the said Wrublewski, did cause said revolver to be discharged, and did assault and strike in and upon the chest with a bullet fired from said revolver by means of said discharge, one Rowland P. Travis, lieutenant (junior grade), U. S. Naval Reserve, and did therein and thereby, then and there, mortally wound the said Travis, as a result of which said mortal wound so inflicted as aforesaid he, the said Travis, at or about 1915 on 7 August 1944, at said station did die; the United States then being in a state of war."

That petitioner was brought to trial on July 30, 1946, on the above charges. That your petitioner through his counsel duly entered a plea in bar of

trial on the ground that the accused had once been acquitted of assault with intent to commit murder by a duly constituted court. That the previous acquittal involved the same person named in the specifications for which the accused was tried; namely, Lieutenant (junior grade) Roland F. Travis, U. S. Naval Reserve. It was alleged that the crime of assault with intent to commit murder was a lesser included offense of manslaughter and therefore an acquittal of the lesser crime is a bar to a subsequent prosecution for the greater crime. This plea in [6] bar was denied by the Naval General Court Martial and the trial of petitioner proceeded, resulting in a conviction of the charge of voluntary manslaughter and an acquittal of involuntary manslaughter.

V.

That during the trial of the question of former jeopardy, the principle defense to the accused's plea in bar consisted of a written opinion by the Judge Advocate General of the Navy, which opinion usurped the prerogative of the trial court by stating that this present trial would not constitute former jeopardy. That said opinion of the Judge Advocate General was untimely in light of the fact that this high naval office is the ultimate reviewing authority of the trial court's proceedings and to dictate its opinion in a case prior to the accused having opportunity to present his argument to the trial court, was highly prejudicial to the interests of the accused and deprived him of his right of review.

VI.

That petitioner was tried by General Court Martial, Twelfth Naval District, on July 30, 1946; that since said date of trial to the present date, namely, February 6, 1947, petitioner has been restricted to U. S. Naval Training and Distribution Center, Treasure Island, San Francisco, California. This period of time, approximately seven months, has been spent in waiting for the Navy Department to review the record of proceedings.

That the final decision of the Navy Department is to confirm the findings of the court, namely, findings of guilty to voluntary manslaughter and the sentence under which the petitioner is now serving is five years at hard labor.

VII.

That the Naval General Court Martial had no jurisdiction over the crime of manslaughter for which the accused was tried and convicted because there had been an acquittal of a lesser included offense by a duly constituted Naval General Court Martial.

That the proceedings, finding and sentence of the court in its second trial of the accused are void. [7]

That the reviewing authority of the Navy was without a right to issue an opinion on this case prior to its trial.

Wherefore, your petitioner prays that a writ of habeas corpus issue, that a return date be set; that

your petitioner be restored to his liberty and the status of an officer of the United States Navy.

Respectively submitted,

EDWIN S. WILSON,
Attorney for Petitioner. [8]

State of California,
City and County of San Francisco—ss.

Edwin S. Wilson, being first duly sworn, deposes and says:

That he is an attorney at law, duly licensed to practice in the United States Federal Courts; that he is one of the attorneys for the petitioner in the foregoing petition; that he makes this vertification on behalf of said petitioner for the reason that petitioner is absent from the place where affiant has his office, to-wit, the City of San Francisco; that he has read said petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information or belief, and as to those matters he believes it to be true.

EDWIN S. WILSON.

Subscribed and sworn to before me this 6th day of February, 1946.

[Seal] L. H. CONDON,

Notary Public in and for the City and County of San Francisco, State of California.

(Here follows memorandum of points and authorities.) [9]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE WHY WRIT OF HABEAS CORPUS SHOULD NOT ISSUE

Good cause appearing therefor and upon reading the verified petition on file herein, it is hereby ordered that Captain S. X. McInerney, Commanding Officer of United States Naval Receiving Station, Yerba Buena Island, San Francisco, California, and Rear Admiral D. B. Beary, United States Navy Commandant, 12th Naval District, San Francisco, California, or whomsoever is or are charged with the custody of Matthew Wrublewski, Ensign, U.S.N., appears before this court on the 24th day of February, 1947, at the hour of 10:00 o'clock a.m. of said day, or as soon thereafter as said matter can be heard, at the court room thereof of the undersigned in room 265, Post Office Building, 7th and Mission streets, San Francisco, California, to show cause why a write of habeas corpus should not issue herein as prayed for,

It Is Hereby Further Ordered that a copy of this order be served upon said Captain S. X. McInerney and Rear Admiral D. B. Beary or whomsoever is or are charged with the custody of Matthew Wrublewski, Ensign, U.S.N., by leaving a copy with them, together with a copy of the petition herein, and that a copy [12] of said order and a copy of the

petition herein be served upon the United States District Attorney for this district forthwith.

Dated February 6th, 1947.

LOUIS E. GOODMAN,
Judge.

[Endorsed]: Filed Feb. 6, 1947. [13]

[Title of District Court and Cause.]

MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS

Come now Captain S. X. McInerney, Commanding Officer of United States Naval Receiving Station, Yerba Buena Island, San Francisco, California, and Rear Admiral D. B. Beary, United States Navy Commandant, 12th Naval District, San Francisco, California, and move this Honorable Court to dismiss the petition for write of habeas corpus for the reason that the said application fails to state a cause of action upon which relief can be granted.

Dated February 24, 1947.

FRANK J. HENNESSY,
United States Attorney.

JOSEPH KARSH,
Assistant U. S. Attorney,
Attorneys for Respondents.

District Court of the United States, Northern District fo California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Wednesday, the 2nd day of April, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Louis E. Goodman, District Judge.

No. 26862-G Civil

In the Matter of

MATTHEW WRUBLEWSKI, Ensign, U.S.N., on Petition for a Writ of Habeas Corpus.

ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS AND ORDER TO HOLD PETITIONER WITHIN THE JURISDICTION OF THIS COURT PENDING APPEAL

This case came on regularly this day for hearing of respondent's motion to dismiss the petition for a writ of habeas corpus. Edwin Wilson, Esq., attorney for petitioner, and Joseph Karesh, Esq., Assistant U. S. Attorney, for respondent, were present. It Is Ordered that said petition be dismissed in accordance with the motion to dismiss, as will more fully appear in a written opinion this day filed. On motion of Mr. Wilson, petitioner's intention to take

an appeal is noted in the record and respondent is ordered to hold petitioner within the jurisdiction of this Court pending appeal herein. [35-a]

[Title of District Court and Cause.]

OPINION

Goodman, District Judge.

Petitioner, an officer of the United States Navy, seeks by his petition for the writ of habeas corpus to be released from the custody of naval authorities who hold him at the United States Receiving Station, Yerba Buena Island, in this district, after his conviction on July 30, 1946, by a court martial of the crime of voluntary manslaughter and subsequent sentence to five years imprisonment. [36] The court issued an order directing the commanding officers of the Receiving Station to show cause why the writ should not issue. Respondents then moved to dismiss the petition. After argument and the filing of briefs, the motion has been submitted for decision.

It appears from the petition that petitioner, on December 11, 1944, was tried before a Naval General Court Martial at Pearl Harbor, Hawaii, for two offenses, to-wit: The crime of murder alleged to have been committed on or about August 7, 1944, at the U. S. Naval Air Station, Oahu, Hawaii, and the crime of assault with intent to commit murder alleged to have been committed at the same time and place upon the same victim. The Naval Court

adjudged petitioner guilty of murder and not guilty of the charge of assault with intent to commit murder.

Upon review of the judgment, the Judge Advocate General, on Nov. 9, 1945, declared the judgment and sentence for the crime of murder illegal, in that the same was committed "within the territorial jurisdiction of the United States" and thus beyond the jurisdiction of that court martial.* Petitioner was not, however, released from custody. On July 30, 1946, petitioner was brought to trial before another Naval General Court Martial upon two charges, to-wit, voluntary manslaughter and involuntary manslaughter. Both charges specified the same homicide for which petitioner was tried in the 1944 court martial. Conviction of the charge of voluntary manslaughter and sentence to five years imprisonment followed.

At his trial on the manslaughter charges, petitioner pleaded "former jeopardy," in that he had previously (in 1944) been acquitted of the crime of assault with intent to [37] commit murder upon the same victim. In support of this plea, petitioner alleged that the crime of assault with intent to commit murder was a lesser included offense of the crime of manslaughter and that acquittal of the former barred subsequent prosecution for the

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*Naval Courts Martial have jurisdiction of the crime of murder only when committed outside the territorial jurisdiction of the U.A. 34 USC s 1200 Art. 6.

greater offense. The court martial overruled the plea and the judgment was later confirmed by the Judge Advocate General.

Because of the alleged "former jeopardy," (Const. Amdt. V.) petitioner claims the Navy court, in the 1946 trial, was without jurisdiction and hence the writ should issue.

Unless it appears that the Navy court lacked jurisdiction, this court may not review its judgment. U. S. v. Grimley, 137 U. S. 147; Swaim v. U. S. 165 U. S. 553; Mullan v. U. S. 212 U. S. 516; Ex parte Mason, 105 U. S. 696; Ex parte Reed, 100 U. S. 13; Carter v. McClaughry, 183 U. S. 365. To resolve the jurisdictional issue, it is not necessary to decide whether a court martial conviction of the crime of manslaughter, where there has been a previous trial of the crime of assault with intent to commit murder, amounts to double jeopardy. This is for the reason that the specific guarantees of the 5th amendment to the Constitution relating to criminal prosecutions may not be invoked in "cases arising in the land or naval forces" of the United States. Ex parte Quirin, 317 U. S. 43; Ex parte Milligan, 71 U. S. 2, 123; U. S. ex rel Innes v. Crystal (2 Cir.) 131 Fed. (2d) 576; Ex parte Benton, 63 Fed. Supp. 808. The Naval court's decision denying the plea of double jeopardy may have been erroneous. But such errors of law by courts martial are not of themselves reviewable or correctible in the civil courts. They may be reviewed here only if they are of such a nature as to amount to a breach of the

"basic doctrine of fairness" under the due process clause of the [38] Constitution and thus oust the Naval court of jurisdiction. U. S. v. Hiatt (3 Cir.) 141 Fed. (2d) 664; Ex parte Benton, supra. And "to those in the military or naval services of the United States, the military law is due process." Reaves v. Ainsworth, 219 U. S. 304. (Emphasis supplied). The question, therefore, is: Was the treatment given petitioner by the Navy court so "unfair" as to constitute lack of due process under military law?

Petitioner was represented by counsel during both courts martial. No claim is made of any unfairness in the conduct of his trials. It is not claimed that he was denied the right to produce witnesses or to cross examine witnesses. Nor is any conduct of the court itself complained of. The contentions made here were urged, both at his second court martial and upon review by the Judge Advocate General. They were determined adversely to him. Under military law, the decisions may have been wrong. But we may correct them here, only if the errors amount to a denial of due process.

It is a reasonable inference, as it would be in the civil courts, that the charge of assault with intent to commit murder was added to the charge of murder at the first court martial in order to provide for the exigencies of proof. Obviously acquittal of the assault charge was in the nature of a dismissal of that charge, because of the finding of guilt of murder. The entire record of petitioner's case

negatives the assumption that he may have been acquitted of assault with intent to commit murder due to a lack of the required degree of proof to establish the commission by him of any assault upon the deceased at all, or of an intent to kill. Indulgence in this assumption would require complete disregard of the fact that the court martial believed and found him guilty of the greater crime of [39] murder.

Nothing in the record presented by the petition indicates a violation of the basic doctrine of fairness. It is true that much fumbling and delay by the Naval authorities is disclosed. At least, from the civil viewpoint, it may be so characterized. But I may not issue the write for such reasons. In fact, nothing about this case bestirs any judicial urge to invoke the great writ of habeas corpus. Moreover, it may not be amiss to point out that the plight of petitioner, under all the circumstances, is not too unfortunate. Indeed he may have been more severely dealt with in the first instance had not the Naval authorities made the jurisdictional mistake of charging him with murder.

My conclusion is that the showing made fails to demonstrate a breach of the broad and basic doctrine of fairness under the due process clause.

The motion to dismiss the petition for a writ of habeas corpus is granted and the petition is dismissed.

Dated April 1, 1947.

[Endorsed]: Filed April 2, 1947. [40]

In the United States District Court for the Northern District of California, Southern Division

No. 26862-G

In the Matter of

MATTHEW WRUBLEWSKI, Ensign, U.S.N.,
Petitioner.

Notice Is Hereby Given That Matthew Wrublewski, the petitioner above-named, does hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the opinion made and entered against him in this action on the 1st day of April, 1947, and from each and every part thereof.

EDWIN S. WILSON,
Attorney for Petitioner.

[Endorsed]: Filed April 15, 1947. [41]

In the United States District Court for the Northern District of California, Southern Division

No. 26862-G

In the Matter of

MATTHEW WRUBLEWSKI, Ensign, U.S.N., Petitioner.

DESIGNATION OF RECORD ON APPEAL

To the Clerk of the United States District Court for the Northern District of California, Southern Division:

It is respectively requested that the following be submitted to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit:

1. Petition for Writ of Habeas Corpus filed February 6, 1947.

2. Order to Show Cause Why Writ of Habeas Corpus Should Not Issue.

3. Petitioner's Memorandum of Points and Authorities.

4. Supplementary Memorandum of Points and Authorities.

5. Respondent's Memorandum to Dismiss Petition for Writ of Habeas Corpus.

6. Respondent's Supplementary Memorandum.

7. Respondent's Amendments to Original Memorandum.

8. Petitioner's Memorandum in Answer to Respondent's Supplementary Memorandum.

EDWIN S. WILSON,
J. W. ERHLICH,
Attorneys for Petitioner.

[Endorsed]: Filed May 12, 1947. [42]

In the Southern Division of the United States District Court for the Northern District of California

No. 26862-G

In the Matter of

MATTHEW WRUBLEWSKI, U. S. N.,
Petitioner.

ORDER EXTENDING TIME TO DOCKET

Good cause appearing therefor, it is hereby Ordered that the defendant and Appellant herein may have to and including July 3, 1947, to file the Record on Appeal in the United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated May 23, 1947.

LOUIS E. GOODMAN,
United States District Judge.

[Endorsed]: Filed May 23, 1947. [43]

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 44 pages, numbered from 1 to 44, inclusive, contain a full, true and correct transcript of the records and proceedings in the Matter of Matthew Wrublewski, on Petition for Writ of Habeas Corpus No. 26862-G, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of $4.70 and that the said amount has been paid to me by the attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 1st day of July, A.D. 1947.

[Seal] C. W. CALBREATH,
Clerk.

M. E. VAN BUREN,
Deputy Clerk. [44]

[Endorsed]: No. 11682. United States Circuit Court of Appeals for the Ninth Circuit. Matthew Wrublewski, Appellant, vs. Captain S. X. McInerney, Commanding Officer of United States Naval Receiving Station, Yerba Buena Island, San Francisco, California, and Rear Admiral D. B. Beary, United States Navy Commandant, 12th Naval District, San Francisco, California, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed July 9, 1947.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 11682

MATTHEW WRUBLEWSKI, Ensign, U.S.N.,
Appellant,

vs.

UNITED STATES OF AMERICA,
Respondent.

DESIGNATION OF POINTS RELIED ON BY APPELLANT ON APPEAL

Comes now Matthew Wrublewski, the appellant in the above entitled matter, through his attorneys,

J. W. Ehrlich and Edwin S. Wilson, and designates and states that he adopts as his points to be relied on on appeal as follows:

1. That the Writ of Habeas Corpus should have been granted and appellant, Matthew Wrublewski, discharged from custody and confinement at the U. S. Naval Disciplinary Barracks, Yerba Buena, San Francisco, California.

2. That the Court had jurisdiction to issue the writ of Habeas Corpus as prayed for in the petition on file herein.

3. That the type of errors committeed by the Naval General Court Martial in its second trial of appellant are the type of errors which may be corrected by the Court.

4. That the guarantees of the Fifth Amendment to the Constitution may be invoked in cases concerning members of the U. S. Navy.

5. That where there has admittedly been error committed by a Naval General Court Martial in permitting a citizen of the United States to be tried twice for the same offense, or lesser included offenses therein, our Federal Courts have jurisdiction to correct such errors.

6. That appellant made claim of misconduct on the part of General Court Martial in his petition on file herein and that said claim of misconduct on the part of the Naval Court was by-passed by the United States District Court; to-wit: It was complained of by appellant that the Naval Court erred

in considering a certain letter from the Judge Advocate General's office, in which the latter issued its decision on the question of double jeopardy before the Court was given an opportunity to consider this important fact; that such conduct on the part of the Judge Advocate General in issuing a statement to the Court biased its judgment and such subsequent action on the part of the Naval Court amounted to unfairness to the accused.

7. That Naval Military Court is without jurisdiction over a crime of which an accused has once been acquitted.

8. That where a Naval General Court is admittedly without jurisdiction of an offense, i.e., murder within the continental limits of the United States, any proceeding of such a court in its trial of such an offense is a nullity and cannot be considered by a second Naval Court Martial or any Court in guessing at what the first Naval Court Martial would have done had it not been in error trying the accused for murder, a charge over which that court had no jurisdiction.

9. That in a trial of two separate charges, one of which the court lacks jurisdiction to hear, such failure of jurisdiction will not invalidate its findings from that charge over which it does have jurisdiction and that the findings on any charge over which the duly constituted Court has jurisdiction cannot later be discarded on the excuse that if the Court had had jurisdiction over the second charge, the result would not have been the same in its find-

ings on the charge over which it did have jurisdiction.

10. That the crime of assault with intent to commit murder is a lesser included offense of manslaughter.

11. That an acquittal of the crime of assault with intent to commit murder will preclude a subsequent trial involving the same victim and set of facts on a trial for manslaughter; that one found innocent as evidenced by an acquittal of an assault cannot later be tried for a homicide resulting from that same assault.

12. That the Navy Department, contrary to said Articles of War, governing the Army and Navy, recognizes the guarantees of the Fifth Amendment to the Constitution and, therefore, the personnel of the U. S. Navy may avail themselves of those guarantees.

J. W. EHRLICH,
EDWIN S. WILSON,
Attorneys for Appellant.

Receipt of a copy of the foregoing designation of points relied on by appellant on appeal is hereby acknowledged this 17th day of July, 1947.

FRANK J. HENNESSY,
United States Attorney.

Per T. S.

In the United States Circuit Court of Appeals
For the Ninth District

No. 11682

MATTHEW WRUBLEWSKI, Ensign, U.S.N.,
Appellant,

vs.

UNITED STATES OF AMERICA,
Respondent.

APPELLANT'S DESIGNATION OF PARTS OF THE RECORD ON APPEAL THAT IS TO BE PRINTED

Comes now Matthew Wrublewski, the appellant in the above-entitled matter, through his attorneys, J. W. Ehrlich and Edwin S. Wilson, Esqs., pursuant to rule 19, paragraph 6, of the rules of this court designates the part of the record on appeal to be printed as follows:

The entire record.

J. W. EHRLICH,
EDWIN S. WILSON,
Attorneys for Appellant.

Receipt of a copy of the foregoing Appellant's Designation of Parts of the Record on Appeal that is to be Printed is hereby acknowledged this 17th day of July, 1947.

FRANK J. HENNESSY,
U. S. Attorney.

Per T.S.