

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

September 23, 2026

Christopher M. Wolpert
Clerk of Court

JAMES A. LAUGHREY,

Petitioner - Appellant,

v.

COMMANDANT, Midwest Joint
Regional Correctional Facility,

Respondent - Appellee.

No. 24-3073
(D.C. No. 5:23-CV-03180-JWL)
(D. Kan.)

ORDER AND JUDGMENT*

Before **TYMKOVICH, McHUGH**, and **FEDERICO**, Circuit Judges.

James A. Laughrey filed a habeas corpus petition under 28 U.S.C. § 2241 to challenge his convictions by a military general court-martial. The district court dismissed the petition in part and denied it in part. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Federal Rule of Appellate Procedure 32.1 and Tenth Circuit Rule 32.1.

I

In 2015, a convening authority referred several charges to a general court-martial, alleging Laughrey sexually abused his biological daughter. In 2016, Laughrey pleaded guilty to aggravated sexual abuse of a child, production and possession of child pornography, adultery, and conduct unbecoming an officer. The court-martial accepted his plea and sentenced him to 8 years of confinement and dismissal from the military. The United States Army Court of Criminal Appeals affirmed his convictions and sentence, *United States v. Laughrey*, No. ARMY 20160146, 2018 WL 3243938 (A. Ct. Cr. App. July 2, 2018), and the United States Court of Appeals for the Armed Forces denied review, *United States v. Laughrey*, 78 M.J. 174 (C.A.A.F. 2018).

In 2021, Laughrey was released from confinement at the Midwest Joint Regional Confinement Facility at Fort Leavenworth, Kansas. But in 2023, the Army Clemency and Parole Board revoked his parole, finding by probable cause that he violated his supervised release by, among other things, possessing 273 images of “Child Abuse Material,” including topless photos of his daughter. Aple. Supp. App. at 79. Laughrey then served the remainder of his sentence and completed his term of supervised release.

In 2024, Laughrey filed the underlying § 2241 habeas petition, challenging the court-martial’s jurisdiction based on the premise that he was a retired soldier. He claimed that because he was retired prior to the

assembly of his court-martial, 1) the convening authority improperly referred the charges to the court-martial, which 2) lacked jurisdiction to convict him. The district court denied the petition, and Laughrey appealed.

II

We first consider our jurisdiction. The collateral consequences of a criminal conviction are usually enough to presume a habeas petitioner's release from confinement does not moot his appeal. *See Spencer v. Kemna*, 523 U.S. 1, 12-13 (1998) (recognizing the presumption of collateral consequences when a habeas petitioner challenges criminal convictions, but declining to presume such consequences when a § 2254 petitioner challenged only his parole revocation); *Lorance v. Commandant, U.S. Disciplinary Barracks*, 13 F.4th 1150, 1153 (10th Cir. 2021) (“[A] petitioner’s release from custody does not automatically moot a habeas petition . . . if he can identify collateral consequences constituting disabilities or burdens which may flow from petitioner’s conviction.” (brackets, citation, and internal quotation marks omitted)). The parties agree that Laughrey has been released, and the government tells us “Respondent, therefore, has no authority to act on any decision favoring [his] claims.” Resp. Br. at 7 n.3.

We ordered supplemental briefing on whether this appeal is moot. The parties confirm Laughrey suffers collateral consequences from his convictions, including losing his retirement pay, veterans’ benefits, the right to possess a

firearm, and the right to vote. He must also register as a sex offender. We agree these consequences show the appeal is not moot. *See Roberts v. Callahan*, 321 F.3d 994, 998 (10th Cir. 2003) (concluding § 2241 petitioner’s release did not moot appeal because he “alleged the existence of [collateral] consequences,” including that he had “been dishonorably discharged from the military and ha[d] forfeited allowances”). We therefore proceed to the merits.

III

Laughrey first contends that, because he was a retired soldier, Army Regulation (AR) 27-10 required the convening authority to obtain approval from the Judge Advocate General of the Army (JAG) before referring the charges to the court-martial. *See AR 27-10, ¶ 5-2(b)(3)* (2011) (“Prior to referral of courts-martial charges against retired Soldiers, approval will be obtained from . . . The Judge Advocate General[.]”). As an initial matter, it is not clear whether Laughrey was actually retired. Although he claims that he was retired by a selective early retirement board, the record of his legal proceedings do not document that a court or military tribunal has found that to be the case. Instead, Laughrey presupposes, based on an attenuated chain of legal and factual assertions, that he was retired by operation of law. In any event, Laughrey says that, because he was retired, the convening authority was required to obtain JAG approval prior to referring the charges to the court-martial, and because it did not, the court-martial lacked jurisdiction.

We need not resolve this issue because it is unexhausted. The general rule is that “if a ground for relief was not raised in the military courts, then the district court must deem that ground waived.” *Roberts*, 321 F.3d at 995. “The only exception to the waiver rule is that a petitioner may obtain relief by showing cause and actual prejudice,” *id.*, which Laughrey does not attempt to demonstrate. Instead, he asserts he was not required to exhaust because his claim is jurisdictional. The district court disagreed, as do we.

The exhaustion requirement may be set aside when a habeas petitioner presents a constitutional claim challenging court-martial jurisdiction over classes of civilians. *See Noyd v. Bond*, 395 U.S. 683, 695 n.8 (1969) (noting three cases where the Supreme Court excused the exhaustion requirement because 1) the expertise of the military courts did not extend to the constitutional claims at issue, and 2) it was unfair to require exhaustion in military court when the petitioners were challenging the right of the military to prosecute them). But Laughrey’s claim that the convening authority failed to comply with AR 27-10 falls squarely within the expertise of the military courts. It presents neither a constitutional question, nor a challenge to court-martial jurisdiction

over classes of civilians. Consequently, Laughrey fails to show the district court erred in dismissing this claim.¹

Laughrey does, however, present a constitutional challenge to the court-martial's jurisdiction based on his alleged status as a retired soldier. We review *de novo*, *see Fricke v. Sec'y of Navy*, 509 F.3d 1287, 1289 (10th Cir. 2007), and conclude this claim falls within the parameters of the Supreme Court's recognition that it is unfair to require exhaustion of military remedies for those challenging their prosecution by the military courts, *Noyd*, 395 U.S. at 695 n.8. Thus, Laughrey was not required to exhaust this claim. Even so, it is foreclosed by precedent.

The Constitution authorizes Congress “[t]o make Rules for the Government and Regulation of the land and naval Forces.” U.S. Const. art. I, § 8, cl. 14 (“Make Rules Clause”). Congress has determined that retired military servicemembers are subject to the Uniform Code of Military Justice (UCMJ). 10 U.S.C. § 802(a)(4). Laughrey contends that his conviction by court-martial is inconsistent with the Make Rules Clause. He argues that because he was a retired soldier, he was not part of the “land and naval Forces,” so his prosecution was constitutionally impermissible. The government

¹ Because this claim is unexhausted, we need not consider Laughrey's argument under *United States v. Henderson*, 59 M.J. 350 (C.A.A.F. 2004), which is inapposite in any event.

counters that “Article I empowers Congress to ‘subject persons actually in the armed service to trial by court-martial,” Resp. Br. at 16 (quoting *United States ex rel. Toth v. Quarles*, 350 U.S. 11, 14 (1955)). Because retired soldiers remain in the military, the government insists, they may be court-martialed.

The singular consideration when assessing the propriety of court-martial jurisdiction is whether the accused “is a person who can be regarded as falling within the term ‘land and naval Forces.’” *Solorio v. United States*, 483 U.S. 435, 439 (1987) (internal quotation marks omitted). As it pertains to retirees, this court recently concluded that they “are subject to the [UCMJ] and may be tried by court-martial.” *Wilson v. Curtis*, 150 F.4th 1359, 1361 (10th Cir. 2025) (citing 10 U.S.C. § 802(a)(4)). *Wilson* surveyed the relevant case law and explained that retired servicemembers maintain their military status because they must obey military orders, they may be involuntarily recalled to active duty at any time, they may wear their uniform in certain circumstances, they maintain a military rank, and they receive military pay. *Id.* at 1365. Based on these factors, the court concluded that “retired servicemembers hold military status and are thus amenable to court-martial jurisdiction.” *Id.* at 1369; see also *Larrabee v. Del Toro*, 45 F.4th 81, 83 (D.C. Cir. 2022) (recognizing Fleet Marine Corps Reservists, who are former Marines with at least 20 years of active service, remain members of the armed forces and subject to court-martial); *United States v. Begani*, 81 M.J. 273, 277-79 (C.A.A.F. 2021)

(recognizing Navy Fleet Reservists, who are former members of the Navy with at least 20 years of active service, remain members of the armed forces subject to court-martial); *Pearson v. Bloss*, 28 M.J. 376, 379-80 (C.M.A. 1989) (recognizing retired enlisted servicemembers of the Air Force with at least 20 years of active service remain part of the military for purposes of court-martial jurisdiction).

Wilson forecloses Laughrey's claim. Even if he was retired, he remained part of the "land and naval Forces" and was therefore subject to the jurisdiction of the military court-martial. Accordingly, the district court correctly denied his claim.

AFFIRMED.

Entered for the Court

Richard E.N. Federico
Circuit Judge