

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA DISTRICT

CASE NO _____

SYNEEDA L. PENLAND,

Petitioner Application for an expedited
restraining order

v.

Raymond E. Mabus, Jr.,

Secretary of the Navy,

1000 Navy Pentagon

Washington, DC 20350

Respondent

MOTION FOR PRELIMINARY INJUNCTION

Petitioner, Lt. Cmdr. Syneeda Lynn Penland, hereby moves this Court to issue a preliminary injunction directing Secretary of the Navy Raymond E. Mabus, Jr. to overturn an earlier ruling that petitioner be discharged from active duty on July 31, and instead retain petitioner on active duty until she can have a hearing on the merits of her Complaint for Relief under the writ of Habeas Corpus that petitioner has also filed with this Court.

STATEMENT OF FACTS

Penland is an unmarried Navy officer who has served her country in uniform for more than 19 years. In May 2008, a Navy court martial convicted her of adultery, conduct unbecoming an officer, failure to obey a lawful order, and making a false official statement more than one year after Navy officials accused her of having a sexual relationship with a married, but legally separated, male Navy officer belonging to a separate command. Penland has maintained that her prosecution was a reprisal for a series of complaints that she made against her Navy superiors and civilian defense contractors about financial improprieties within her command, Maritime Expeditionary Security Group ONE, based at Imperial Beach, California, and as such, was a violation of the Military Whistleblowers Protection Act. Four of Penland's complaints, including one against Navy Capt. John Sturges, Penland's commanding officer and the man who initially charged her -- were substantiated by a Defense Department inspector general, but this came after Penland had been convicted and jailed. Navy Personnel Command, as

a result of her conviction, ordered Penland to show cause why she should be retained in the Navy. As part of that process, an administrative board of three Navy officers found that Penland should be separated from the Navy by reason of her court martial convictions and her alleged substandard performance, of which there was no evidence presented other than Penland's convictions and a below average fitness report given to her days before she was charged. Nevertheless, the Secretary of the Navy, by delegated authority, upheld the administrative board's findings, and Penland has been ordered discharged from the Navy with a less than honorable characterization of service by July 31.

REQUIREMENTS FOR PRELIMINARY RELIEF

There are four requirements that must be met in order for a Court to grant a preliminary injunction: the moving party must be likely to suffer irreparable harm if relief is not granted, the moving party must be likely to prevail on the merits at trial, the injunction must be in the public interest, and the burdens of the two parties should be balanced in favor of the moving party. See *Doran v. Salem Inn*, 422 U.S. 922,911.

PETITIONER'S ARGUMENT FOR INJUNCTIVE RELIEF

Penland will suffer irreparable harm if the injunction is not granted. She has served more than 19 years on active duty in the Navy, and in approximately nine months, will be eligible to retire with a pension and medical coverage at Navy hospitals for the rest of her life. Penland has earned these benefits. She enlisted in the Navy in 1989 shortly after graduating from high school. She rose through the ranks, and was commissioned as an officer in 1997. Her average fitness report score was 4.67 out of a possible 5; she has served as a supply officer aboard several ships and has also done a tour in South Korea. She has never been in trouble with the Navy before her recent charges, and at several former commanding officers offered to testify on her behalf at her court martial. It is inconceivable that the Navy, which within the past two years, has granted retirement with full benefits to a married officer who admitted moonlighting as a prostitute while teaching an ethics course at the Naval Academy, and a second married officer determined to have lied to investigators about having sexual intercourse in the White House basement with a woman while on duty as a presidential military aide would drum out of service a single woman who, by Navy officials' own admission, has had a stellar work history – and who has already been adequately punished by serving a 60 day jail sentence and paying a \$9,000 fine, all for having sex with a legally separated man who subsequently divorced his wife.

Penland is likely to prevail on the merits because the court martial that led to her convictions was rife with egregious violations of her constitutional rights and plagued by prosecutorial misconduct, and ineffective assistance from her defense counsel. The court martial problems included 1) prosecutors basing their case on

photographs authenticated by the wife of the man Penland was convicted of having an affair with – a woman who by her own admission was not present when the photographs were taken and had no idea where they were taken, when they were taken, or what circumstance they were taken in – egregious violations of UCMJ authentication standards articulated by the Court of Appeals for the Armed Services. See U.S. v. Reichart 31 M.J. 521 (A.C.A.S 1990). At the prosecution’s prompting, the woman identified the photographs, none of which showed the face of her husband, Navy Lt. j.g. Mark Wiggan, by vague details such as a mole on his penis, his having a paunchy abdomen and her wearing a “little bracelet”, 2) Penland’s Navy defense counsel, Marine Capt. Patrick Callahan, ignored Penland’s demands that he call her civilian boyfriend, who was willing to testify that he, not Wiggan, was the man in the photographs. Such testimony would certainly have created a reasonable doubt as to whether the pictures in question depicted sexual activity between Penland and Wiggan, 3) that the military judge refused Penland’s request to dismiss her defense counsel for ineffective assistance of counsel after she objected to his shoddy defense work, and offered her a Hobson’s choice between presenting the defense case by herself with 15 minute’s preparation time or continuing with Callahan, 4) that her prosecution constituted a reprisal for Penland reporting illegal actions by Navy personnel and defense contractors in violation of the Military Whistleblower Protection Act. Those acts were later substantiated by a Defense Department Inspector General, and 5) that Navy Capt. John Sturges, the officer who initially charged Penland, should have instead asked a higher ranking officer to charge her because her complaints about his financial misconduct gave him personal interest in the case’s outcome. See U. S. v Gordon 2 CMR 161, 166 (C.M.A. 1952). These and a host of other violations outlined in Penland’s Habeas Corpus petition show that each of her convictions should be overturned.

If Penland’s convictions were overturned, the only basis for her separation would be what the administrative board deemed her unacceptable conduct. However, Penland had an exemplary career as a Navy Supply Officer, earning outstanding fitness report ratings over the course of her career, never having had disciplinary action taken against her, and receiving multiple citations and commendations during her career. Indeed, even Sturges conceded that she came to the command with a reputation as a “very good officer” – a fact attested to by the fact that three of Penland’s former commanding officers either testified on her behalf, or offered to testify on her behalf at her court martial. As such, there is no credible basis for the board’s finding of unacceptable conduct absent her convictions, and she should thereby be allowed to finish out her 19-year career.

It is in the public interest that the Court grant this relief. At a time when the Navy has struggled to recruit generally, and particularly to find exceptional female and minority officers, it would be a travesty if Penland was driven from the Navy nine months shy of retirement for offenses, that even if she committed them, she has already paid a heavy cost for. The Navy does not exist in a vacuum. It is an

essential part of the social fabric of our country, and as such, it is in its interest and in our own, that it be perceived as an institution that is evenhanded in punishments and that does not engage in vindictive reprisal against individuals who report wrongdoing. That it allows married officers who moonlight as prostitutes and who have sexual affairs while on duty at the White House after handing over nuclear codes to civilian employees while discharging single officers for having sexual relations with legally separated men in separate commands seems to be the height of hypocrisy, nepotism, or worse, and should not be tolerated by this Court.

The burdens born by both parties would be very much balanced if the Court grants this injunction. The Navy can either put Penland back to work, choose to allow her to continue to muster from home, or propose some other remedy to its liking that will ensure that Penland has access to quality medical care and is not unjustly deprived of her hard earned retirement. If this relief is granted, there is no burden that the Navy will bear, aside from some vindictive officers being deprived of seeing a woman's life destroyed and possibly put at risk. Penland has already been publicly humiliated, seen a promising career go down in flames, had her professional reputation ruined, served 45 days in jail, and paid a \$9,000 fine. The Navy has already shown that it does not tolerate adultery; there is no need to further punish this woman. Moreover, this case is filed in the U.S. District Court for the District of Columbia, where the Navy has a sizable contingent of lawyers to hear and argue this case, whereas Penland's meager financial resources have allowed her to hire three solo practitioner attorneys to litigate a very complicated case. Only one of those – myself – is in the Washington, D.C. area.

The Navy would suffer no harm in allowing Penland to continue to serve until March 1010, when she will be eligible for retirement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff hereby prays the Court to issue an Order preliminarily enjoining respondent from discharging Lt. Cmdr. Syneeda Lynn Penland until a hearing on the merits can be held.

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