



Military Appeals Court Overturns HIV Conviction of Sgt. David Gutierrez Based on OMSJ Medical Evidence

For Immediate Release

WASHINGTON, D.C./EWorldWire/March 3, 2015 --- Office of Science and Medical Justice (OMSJ) confirms that, in its unanimous decision, the Court of Appeals for the Armed Forces ruled the evidence used to convict Air Force Sgt. David Gutierrez of aggravated assault was "legally insufficient." Diagnosed with HIV in 2007, Gutierrez, a 20-year-military veteran stationed at McConnell Air Force Base in Wichita, Kan., was convicted of aggravated assault for exposing multiple sex partners to HIV at swinger parties.

The CAAF's decision released Feb. 23, 2015 overturns a 25-year military precedent that allowed military personnel to be convicted of aggravated assault solely on the basis that a service member tested positive for the HIV virus. In its opinion, CAAF determined that "the question in this case is not whether HIV, if contracted, is likely to cause grievous bodily harm but rather whether the risk of HIV transmission is 'likely' to produce death or grievous bodily harm."

Testimony from OMSJ defense experts established that the likelihood of heterosexual HIV transmission is close to non-existent, while the military's own medical expert admitted that HIV transmission is "unlikely to occur when there is only a 1-in-500 chance of occurrence."

"This is a game changer for military cases and HIV testing," said Gutierrez' attorney Kevin McDermott. The court's reversal will also impact Sgt. Gutierrez's prison term. Sentenced to eight years at Ft. Leavenworth Federal Penitentiary, Gutierrez has now served five years. Upon his release, Gutierrez may receive a bad conduct or dishonorable discharge from the military.

"The Air Force has two reasons to reduce David's sentence," added McDermott. "First, all of the HIV aggravated assault convictions have been tossed out. Second, CAAF has also ruled that the Air Force took too long to get David's case to the court on appeal."

Should a rehearing of the case occur before a trial court, OMSJ medical and scientific experts will assert that Gutierrez's original diagnosis of HIV was in error, and not supported by his medical history nor by the testing protocol employed by the Air Force. "Without OMSJ's efforts, the results in this case could not have been possible," said McDermott.

Based on the Gutierrez case, another aggravated assault conviction of Army Lt. Col. Kenneth Pinkela is being appealed, while the defense of other active military HIV cases is being modified.

Founded by investigator and retired LAPD officer Clark Baker, of the more than 50 cases OMSJ has completed

since 2009, all but three have resulted in favorable plea agreements, acquittal or the withdrawal of all HIV-related charges. Visit <http://www.omsj.org> for more information.

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