

E-Filed 11/21/11

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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
8 SAN FRANCISCO DIVISION
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10 CHRISTOPHER J. GURRY,

No. C 11-0964 RS

11 Petitioner,

12 v.

**ORDER DISMISSING PETITIONER'S
WRIT OF HABEAS CORPUS WITH
LEAVE TO AMEND**13 CHRISTINE BUTERA-ORTIZ, UNITED
14 STATES PROBATION OFFICER,15 Respondent.
16 _____

17 Petitioner Christopher J. Gurry was found guilty by a general court martial of committing
18 indecent acts on the body of a female under the age of 16 and of knowingly possessing visual
19 depictions of a nude minor. In 2007, petitioner was sentenced to confinement for four years,
20 reduction to E-1 rank, forfeiture of all pay and allowances, and a dishonorable discharge. Petitioner
21 sought, and was denied, relief both on direct appeal to the United States Air Force Court of Criminal
22 Appeals, and collateral review to the United States Court of Appeals for the Armed Forces. He is
23 now confined on supervised release in the Northern District of California. Gurry filed this action for
24 a writ of habeas corpus pursuant to 28 U.S.C. §§ 1331 & 2241. The Petition must be dismissed with
25 leave to amend for lack of jurisdiction. *See Schlesinger v. Councilman*, 420 U.S. 738, 746-47
26 (1975) (“[A]cts of a court martial, within the scope of its jurisdiction and duty, cannot be controlled
27 or reviewed in the civil courts, by writ of prohibition or otherwise.” (citing *Smith v. Whitney*, 116
28 U.S. 167, 177 (1886)). If petitioner elects to amend the Petition, he must do so within thirty days of

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the date of this Order. Any amended petition should address *Schlesinger v. Councilman* and explain why this Court should assert its jurisdiction over Gurry’s writ of habeas corpus.

IT IS SO ORDERED.

Dated: 11/21/11



RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE