

HOMOSEXUAL
MILITARY

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Appeal
(W. TIMES)
by gay
sergeant
rejected

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The Supreme Court yesterday turned down an appeal by a former Air Force sergeant who was convicted of assault for homosexual conduct after testing positive for the AIDS virus.

The justices, without comment, let stand Nathaniel Johnson Jr.'s conviction, dishonorable military discharge and six-year prison sentence.

In the appeal to the high court, lawyers for Johnson said the portion of the Uniform Code of Military Justice used to prosecute him for aggravated assault is impermissibly vague when applied to the possible transmission of a virus.

They said the offense of aggravated assault never was intended to be used against someone accused of transmitting a contagious disease unless there is a clear intent to spread the disease.

Johnson was stationed at McChord Air Force Base in Washington state when in 1987 he tested positive for the HIV virus, which causes AIDS.

He was a patient at the Wilford Hall Medical Center at Lackland Air Force Base in Texas when the Air Force adopted a policy that held out the possibility of disciplinary action for HIV-infected military members who did not practice safe sex.

Lawyers for Johnson say he never was told about the policy.

After returning to McChord, Johnson engaged in homosexual conduct with a 17-year-old boy he had met in a Tacoma bar.

Tried by general court-martial at McChord in early 1988, Johnson was convicted of consensual sodomy. He also was convicted of aggravated assault and attempted sodomy. He was sentenced to 10 years in prison.

The U.S. Air Force Court of Military Review threw out the attempted consensual sodomy conviction after ruling that the charge essentially duplicated the aggravated assault charge.

The court reduced Johnson's sentence to six years, and its ruling was upheld by the U.S. Court of Military Appeals last April.

In other decisions yesterday:

- The court, which has twice ruled that burning the American flag is protected political speech, set aside a Minnesota man's flag-burning conviction. The justices told a federal appeals court to restudy a free-speech challenge to the man's federal conviction for burning the flag.

The lower court had ruled that the man was arrested and prosecuted not for any political message contained in his flag burning but "to prevent further breaches of the peace."

- Refused to revive a copyright lawsuit over an unauthorized biography of L. Ron Hubbard, founder of the Scientology religion. The justices, without comment, let stand a decision throwing out allegations of copyright infringement against the book's publisher.

- Refused to help states ban deceptive advertising by airlines. Without comment, the court left intact a ruling that only the federal government may regulate airline ads. The lower court's ruling said that Texas officials lack the authority to take action against allegedly misleading airline ads.

- Ruled against two policemen from Peotone, Ill., who contended they were disciplined unlawfully for wearing earrings when off duty.