

**UNITED STATES NAVY-MARINE CORPS
COURT OF CRIMINAL APPEALS
WASHINGTON, D.C.**

**Before
E.E. GEISER, L.T. BOOKER, W.F. RODGERS
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**MARCUS D. SAM
PRIVATE FIRST CLASS (E-2), U.S. MARINE CORPS**

**NMCCA 200900501
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 14 May 2009.

Military Judge: LtCol G.W. Riggs, USMC.

Convening Authority: Commanding Officer, 8th Communication
Battalion, II Marine Expeditionary Force, Camp Lejeune, NC.

Staff Judge Advocate's Recommendation: Col G.E. Lambert,
USMC.

For Appellant: Maj Rolando Sanchez, USMC.

For Appellee: Mr. Brian K. Keller, Esq.

17 December 2009

OPINION OF THE COURT

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.

PER CURIAM:

After careful consideration of the record, submitted without assignment of error, we affirm the findings and sentence as approved by the convening authority. Art. 66(c), Uniform Code of Military Justice, 10 U.S.C. § 866(c).

We note that Prosecution Exhibit 2 contains an entry concerning nonjudicial punishment imposed on the appellant more than two years prior to the charged offenses. This entry was admitted despite the restriction contained in the Manual of the Judge Advocate General, Judge Advocate General Instruction 5800.7E § 0141 (CH-2 16 Sep 2008). Not only did the appellant not object to admission of the entry, Record at 52, his counsel

used the appellant's history of prior nonjudicial punishments in his argument on sentencing:

PFC Sam, if you look at his, Prosecution Exhibit 2, excerpts from his service record book, PFC Sam has been subjected to, pretty much, leaderships by charge sheet. Every little thing he does, he's getting NJP'd for, he's getting hit on, every little thing.

Record at 86-87. Accordingly, we find no plain error. Since the entry was in the record of trial, subsequent inclusion of the nonjudicial punishment in the staff judge advocate's recommendation did not amount to plain error.

For the Court

R.H. TROIDL
Clerk of Court

Judge RODGERS participated in the decision of this case prior to detaching from the court.