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

Before
L.T. BOOKER, J.K. CARBERRY, J.K. LUTZ
Appellate Military Judges

UNITED STATES OF AMERICA

v.

SAMMIE L. CAISON, JR.
CORPORAL (E-4), U.S. MARINE CORPS

NMCCA 201000233
SPECIAL COURT-MARTIAL

Sentence Adjudged: 22 December 2009.
Military Judge: Col Daniel Daugherty, USMC.
Convening Authority: Commanding Officer, Headquarters and Support Battalion, Marine Corps Base, Camp Lejeune, NC.
Staff Judge Advocate's Recommendation: LtCol K.M. McDonald, USMC.
For Appellant: LCDR Anthony Yim, JAGC, USN.
For Appellee: Mr. Brian Keller, Esq.

15 June 2010

OPINION OF THE COURT

IN ACCORDANCE WITH RULE 18.2, NMCCA RULES OF PRACTICE AND PROCEDURE, THIS OPINION DOES NOT SERVE AS PRECEDENT.

PER CURIAM:

A military judge sitting as a special court-martial convicted the appellant, pursuant to his pleas, of one specification each of conspiracy, sale of military property, and larceny of government property in violation of Articles 81, 108, and 121, Uniform Code of Military Justice, 10 U.S.C. §§ 881, 908, and 921. The convening authority approved a sentence of 75 days confinement, reduction to pay grade E-1, a fine of $380.00, and a bad-conduct discharge.

Although submitted without assignment of error, we note that the military judge failed to establish a factual predicate to find the appellant guilty of selling military property and stealing government property “on divers occasions”. We will take corrective action. The findings and sentence, as modified, are correct in law and fact, and no error materially prejudicial to the substantial rights of the appellant remains. Arts. 59(a) and 66(c), UCMJ.

Pursuant to a pretrial agreement, the appellant pled guilty to stealing and selling DoD vehicle decals "on divers occasions.” In advising the appellant of the elements of the single specifications under Charges II and III, however, the military judge omitted any reference to “divers occasions”. Furthermore, neither the providence inquiry nor the stipulation of fact provides a factual basis to find that the appellate stole and sold the DoD decals on divers occasions. We are nevertheless able to conduct a thorough review under Article 66, and we conclude that the appellant did, in fact, steal and wrongfully sell the decals during the period alleged in the specifications. Accordingly, the findings of guilty to the single specifications under Charge II and III are affirmed, except for the words "on divers occasions." The findings of guilty to the excepted words are set aside. The remaining findings of guilty are affirmed.

As a result of our action on the findings, we reassessed the sentence in accordance with the principles of *United States v. Moffeit,* 63 M.J. 40 (C.A.A.F. 2006). We are satisfied that, absent the excepted language, the sentence would not have been any less than that adjudged by the military judge and approved by the convening authority. In reaching this conclusion, we note that the evidence offered in aggravation, specifically, Prosecution Exhibit 6, established that the appellant was a non-commissioned officer working at the Military Police Company when he stole and sold DoD vehicle decals. We also find the sentence to be appropriate for this offender and his offenses. Art. 66(c), UCMJ; *United States v. Baier*, 60 M.J. 382, 384-85 (C.A.A.F. 2005).

The sentence as approved by the convening authority is affirmed.

For the Court

R.H. TROIDL
Clerk of Court