

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

**Before
L.T. BOOKER, J.K. CARBERRY, B.G. FILBERT
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**BRIT A. CORNWALL
LANCE CORPORAL (E-3), U.S. MARINE CORPS**

**NMCCA 201000255
GENERAL COURT-MARTIAL**

Sentence Adjudged: 29 December 2009.

Military Judge: LtCol David M. Jones, USMC.

Convening Authority: Commanding General, 1st Marine
Aircraft Wing, Okinawa, Japan.

Staff Judge Advocate's Recommendation: Col J.R. Woodworth,
USMC.

For Appellant: CDR R.D. Evans, Jr., JAGC, USN.

For Appellee: CAPT Mark A. Grover, JAGC, USN; Capt Mark V.
Balfantz, USMC.

19 October 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 general court-martial convicted the appellant, consistent with his pleas, of possessing child pornography, in violation of Article 134, Uniform Code of Military Justice, 10 U.S.C. § 934. The military judge announced a sentence of confinement for 12 months, forfeiture of all pay and allowances, reduction to pay grade E-1, and a bad-conduct discharge from the U.S. Marine Corps. The report of results of trial prepared by the trial counsel at the conclusion of the court-martial correctly reflected the adjudged sentence. In a clemency request dated 29 January 2010, trial defense counsel

accurately listed the adjudged sentence. The staff judge advocate's recommendation dated 17 February 2010, however, failed to list the forfeiture of all pay and allowances in its summary of the adjudged sentence. In his action dated 23 March 2010, the convening authority (CA) stated that the sentence was approved. Additionally, the CA stated that he considered, *inter alia*, the report of results of trial, the record of trial, all clemency requests submitted by trial defense counsel, and the staff judge advocate's recommendation, and explicitly granted clemency with respect to the adjudged confinement. The order promulgating the results of trial and the action of the CA, see RULE FOR COURTS-MARTIAL 1114, MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.), omitted the reference to total forfeitures in its recitation of the adjudged sentence.

In a single assignment of error, the appellant asserts that the CA's action disapproved the forfeiture of all pay and allowances adjudged at his court-martial. He, therefore, requests that we "approve" a sentence that does not include total adjudged forfeitures. Although we find that the convening authority's action taken alone is unambiguous in approving the adjudged sentence, the error in the staff judge advocate's recommendation cited in that action and in the very order that promulgates the action raises doubt as to what the CA intended. We will take corrective action in our decretal paragraph. After carefully considering the record of trial and the pleadings of the parties, we conclude that the findings and the sentence approved in the convening authority's action are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant was committed. Arts. 59(a) and 66(c), UCMJ.

Convening Authority's Action

A convening authority's action reflecting the approved sentence is required to be clear and unambiguous. *United States v. Politte*, 63 M.J. 24, 25-26 (C.A.A.F. 2006). "[W]hen the plain language of the convening authority's action is facially complete and unambiguous, its meaning must be given effect." *United States v. Wilson*, 65 M.J. 140, 141 (C.A.A.F. 2007). When evaluating the clarity of a convening authority's action, we are limited to consideration of the four corners of that action and may not consider matters outside that document. *Id.* If, on the other hand, a convening authority's action is found to be "incomplete, ambiguous, or erroneous," this Court is empowered to return the action for clarification or issuance of a corrected action. RULE FOR COURTS-MARTIAL 1107(g), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.)

In the instant case, the court-martial promulgating order states the sentence adjudged at the appellant's court-martial as follows:

[T]o be confined for 12 months; to be reduced to pay grade E-1; and, to be discharged from the Marine Corps with a bad-conduct discharge. Automatic forfeitures pursuant to Article 58b, UCMJ, apply.

The convening authority's action states the "sentence is approved" and "ordered executed" (with appropriate exception for the appellate review of the punitive discharge) without any mention of adjudged forfeitures. The CA explicitly stated that, prior to taking his action, he considered four sources of information which purported to contain the adjudged sentence, three of which (record of trial, report of results of trial and clemency petition) were accurate and one of which (staff judge advocate's recommendation) was not.

If "the four corners of th[e] action" in this case does not include the referenced documents or the court-martial promulgating order, then the plain language of the convening authority's action is to approve the adjudged sentence. If it includes all of the referenced documents and the court-martial promulgating order, then the action is ambiguous. If it includes only the court-martial promulgating order, then the action is erroneous.

The findings are affirmed. So much of the sentence as provides for a bad-conduct discharge, confinement for 12 months, and reduction to pay grade E-1 is affirmed.

For the Court

R.H. TROIDL
Clerk of Court