

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

**Before
J.A. MAKSYM, B.L. PAYTON-O'BRIEN, M.G. MCALEVY
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**JAMIE J. CYRAN
PRIVATE FIRST CLASS (E-2), U.S. MARINE CORPS**

**NMCCA 201000512
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 24 June 2010.

Military Judge: Col M. Whitson, USMCR.

Convening Authority: Commanding Officer, Headquarters and Service Battalion, Marine Corps Base, Quantico, VA.

Staff Judge Advocate's Recommendation: LtCol Chris Greer, USMC.

For Appellant: CAPT Paul Jones, JAGC, USN.

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

21 December 2010

OPINION OF THE COURT

**IN ACCORDANCE WITH RUE 18.2, NMCCA RULES OF PRACTICES AND PROCEDURE, THIS
OPINION DOES NOT SERVE AS PRECEDENT.**

PER CURIAM:

A military judge sitting as a special court-martial convicted the appellant, consistent with his pleas, of one specification of unauthorized absence in violation of Article 86, Uniform Code of Military Justice, 10 U.S.C. § 886. The appellant was sentenced to confinement for 9 months, reduction in pay grade to E-1, "to forfeit two-thirds pay and allowances otherwise due for a period of 9 months," and a bad-conduct discharge. The convening authority (CA) approved the sentence.

After approving the sentence, the CA further ordered that the "[a]proved forfeiture of pay will be \$1070.00 per month for

nine months. Forfeiture of allowances is not an authorized punishment at this forum and is disapproved."

This case was submitted without specific assignment of error. However, in a footnote to his merit submission, appellate defense counsel avers that the CA "cured" the military judge's error in adjudging forfeitures of pay and allowances "by only approving a proper whole-dollar amount and by disapproving the forfeiture of allowances."

Following our review of the record, we agree that the military judge erred with respect to the adjudged forfeitures imposed by announcing a sentence that omitted both the exact amount of pay in whole dollars to be forfeited, and by sentencing the appellant to forfeit a portion of both his pay and allowances. See RULE FOR COURTS-MARTIAL 201(f)(2)(B), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.) (forfeiture of allowances is not an authorized punishment at a special court-martial) and 1003(b)(2) (a sentence to forfeiture shall state the exact amount in whole dollars to be forfeited each month and the number of months the forfeitures will last). However, we disagree with appellate defense counsel's assertion that the convening authority completely remedied the error. The CA's action reads, in part: ". . . the sentence is approved. Approved forfeiture of pay will be \$1,070.00 per month for nine months. Forfeiture of allowances is not an authorized punishment at this forum and is disapproved."

We conclude that the CA's action was ambiguous on its face, in that he first expressly approved the sentence as adjudged, but then attempted to explicitly approve only a whole dollar amount of forfeitures of pay and disapproved the forfeiture of allowances. In addition, the whole dollar amount of forfeitures approved by the CA exceeded the maximum sum allowable for an E-1, and appears to have been miscalculated based upon the base pay of an E-2.

R.C.M. 1107(g) mandates that when a CA's action is found to be "incomplete, ambiguous, or erroneous," this court is obligated to return the action to the convening authority for clarification or issuance of a corrected action. "[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). Where, however, the plain language of the action is ambiguous, the appellate courts may examine the surrounding documentation to "interpret an otherwise unclear convening authority action." *United States v. Politte*, 63 M.J. 24, 26 (C.A.A.F. 2006) (citing *United States v. Loft*, 10 M.J. 266, 268 (C.M.A. 1981)).

Based our review of the action and the surrounding documentation, we hold that the CA's intent was clearly discernible. To correct the military judge's error in adjudging forfeitures of allowances along with pay, the CA intended to

approve only so much of the forfeitures of pay as extends to the proper whole dollar amount, and to disapprove the remaining forfeitures. We will take corrective action in our decretal paragraph.

Although not assigned as error, we note that the CA's action purports to execute the appellant's bad-conduct discharge awarded at trial. The CA approved the sentence as adjudged, which included a bad-conduct discharge, and then stated, "In accordance with the UCMJ, the Rules for Courts-Martial, applicable regulations, the pretrial agreement, and this action, the sentence is ordered executed." In accordance with Article 71(c)(1), UCMJ, a punitive discharge cannot be ordered executed until, after the completion of direct appellate review, there is a final judgment as to the legality of the proceedings. Thus, to the extent that the CA's action purported to execute the bad-conduct discharge, it was a nullity. *United States v. Bailey*, 68 M.J. 409 (C.A.A.F. 2009)

After taking corrective action, we conclude the findings and the sentence are correct in law and fact, and that no error materially prejudicial to the substantial rights of the appellant remains. Arts. 59(a) and 66(c), UCMJ.

Conclusion

Accordingly, we affirm the findings and only so much of the sentence as extends to confinement for 9 months, reduction to pay grade E-1, forfeiture of \$940.00 pay per month for nine months, and a bad-conduct discharge.

For the Court

R.H. TROIDL
Clerk of Court