

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

**Before
C.L. REISMEIER, F.D. MITCHELL, R.E. BEAL
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**TERRY H. HAMPLETON
LIEUTENANT JUNIOR GRADE (O-2), U.S. NAVY**

**NMCCA 200900645
GENERAL COURT-MARTIAL**

Sentence Adjudged: 28 July 2009.

Military Judge: CAPT Keith Allred, JAGC, USN.

Convening Authority: Commander, Navy Region Southwest, San Diego, CA.

Staff Judge Advocate's Recommendation: CDR D.C. King, JAGC, USN.

For Appellant: LT Sarah Harris, JAGC, USN; Capt Bow Bottomly, USMC.

For Appellee: LT Timothy Delgado, JAGC, USN.

31 August 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, pursuant to his pleas, of one specification of rape, on divers occasions, of a child under 16 years of age, two specifications of indecent acts with a child, one specification of taking indecent liberties with a child, and two specifications of communicating indecent language to a child under 16 years of age, in violation of Articles 120 and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 920 and 934. The appellant received a sentence of confinement for 15 years, forfeiture of all pay and allowances, and a dismissal from the

naval service. Pursuant to a pretrial agreement, the convening authority suspended all confinement in excess of 10 years and all adjudged forfeitures for six months from the date of the convening authority's action.

The appellant's sole assigned error alleges that the record of trial was not properly authenticated in accordance with RULE FOR COURTS-MARTIAL 1104, MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.). Specifically, the appellant argues that the military judge presiding over the session of court reflected on pages 215-241 neglected to authenticate that portion of the record. We find no prejudicial error.

Three military judges presided over various stages of this trial. Captain Keith J. Allred, JAGC, U.S. Navy, presided over five Article 39(a), UCMJ, sessions extending in the record from pages 14 through 241. The basis for the appellant's argument lies on the authentication page which indicates that Captain Allred only authenticated pages 14 through 214 (vice 241). It is clear that this error is merely clerical, because Captain Allred made a correction on page 238, noting that the word "road" should actually be "rote" and initialed "KJA" beside it.

This court has previously noted that "[t]he importance of an accurate record can not be understated. It is the 'single essential element to meaningful appellate review.'" *United States v. Merz*, 50 M.J. 850, 854 (N.M.Ct.Crim.App. 1999) (quoting *United States v. Credit*, 4 M.J. 118, 119 (C.M.A. 1977)). Here, however, the error is harmless. The appellant does not allege, nor is there any indication of, any inaccuracy in this record. Therefore, we are confident that, in spite of the scrivener's error, this record is accurate, and the purpose of Article 54(a), UCMJ, is satisfied. As in *Merz*, where we are convinced of the accuracy of the record, it is not necessary to return this case for proper authentication. "'To hold otherwise would be to elevate form over substance and would constitute an unnecessary interference with appellant's interest in receiving a timely review on the merits of his case.'" *Id.* (quoting *United States v. Robinson*, 24 M.J. 649 (N.M.C.M.R. 1987)).

After careful consideration of the record and the pleadings, we affirm the findings and sentence as approved by the convening authority. Art. 66(c), UCMJ.

For the Court

R.H. TROIDL
Clerk of Court