

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

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

UNITED STATES OF AMERICA

v.

**BENJAMIN L. KILLMAN
LANCE CORPORAL (E-3), U.S. MARINE CORPS**

**NMCCA 201000148
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 23 November 2009.

Military Judge: Col John Ewers, USMC.

Convening Authority: Commanding Officer, 3d Battalion, 7th Marines, 1st Marine Division (Rein), FMF, Marine Corps Air Ground Combat Center, Twentynine Palms, CA.

Staff Judge Advocate's Recommendation: LtCol R.J. Ashbacher, USMC.

For Appellant: CAPT Patricia Leonard, JAGC, USN.

For Appellee: CAPT Martin Grover, JAGC, USN; LCDR Sergio Sarkany, JAGC, USN.

17 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 a single violation of Article 93, Uniform Code of Military Justice, 10 U.S.C. § 893. The appellant also entered guilty pleas, with exceptions and substitutions, to a second charge and four specifications of assault, in violation of Article 128, UCMJ, 10 U.S.C. § 928. During the court-martial, the appellant did not appear to be provident to Specification 2 of the Article 128 offense, and he therefore changed his plea to Specification 2 to

not guilty. Record at 31-32. The government moved to withdraw and dismiss Specification 2, a motion which the military judge granted. *Id.* at 45. The convening authority (CA), after reviewing the staff judge advocate's recommendation, which had as an enclosure an accurate results of trial, approved the appellant's sentence of confinement for ninety days and a bad-conduct discharge.

The appellant raises a single assignment of error, averring that the CA erroneously recites in the promulgating order a guilty plea and finding to Specification 2 of the Article 128 offense. As a remedy he requests a corrected promulgating order. The Government does not challenge this error but, in turn, pleads that the error has not resulted in prejudice to the appellant. We agree with both propositions.

The court-martial promulgating order contains the error alleged. Service members are entitled to records that correctly reflect the results of court-martial proceedings. See *United States v. Crumpley*, 49 M.J. 538, 539 (N.M.Ct.Crim.App. 1998). We shall order the necessary corrective action.

No prejudice has been alleged and we find none. We are convinced that the findings and sentence 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. The findings and sentence are affirmed. The supplemental court-martial order will reflect that the appellant pleaded not guilty to Specification 2 under Charge III and that the Government withdrew that specification.

For the Court

R.H. TROIDL
Clerk of Court