

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

**Before  
L.T. BOOKER, E.C. PRICE, B.G. FILBERT  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**MATTHEW B. MCDONOUGH  
SERGEANT (E-5), U.S. MARINE CORPS**

**NMCCA 201000510  
SPECIAL COURT-MARTIAL**

**Sentence Adjudged:** 17 June 2010.

**Military Judge:** LtCol Thomas Sanzi, USMC.

**Convening Authority:** Commanding Officer, Marine Air Control Squadron 1 (REIN), Yuma, AZ.

**Staff Judge Advocate's Recommendation:** Col K.J. Brubaker, USMC. **Addendum:** Maj B.M. Wilson, USMC.

**For Appellant:** LCDR Luis Leme, JAGC, USN.

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

**14 December 2010**

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**OPINION OF THE COURT**  
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**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, consistent with his pleas, of attempted larceny of allowances, false official statements, and larceny of allowances, violations, respectively, of Articles 80, 107, and 121, Uniform Code of Military Justice, 10 U.S.C. §§ 880, 907, and 921. The convening authority approved the adjudged sentence of confinement for 120 days, reduction to pay grade E-1, and a bad-conduct discharge from the U.S. Marine Corps.

This case was submitted without specific assignment of error. In the course of our review, however, we have determined that the appellant's plea to larceny of housing allowances is improvident to a portion of the period, and therefore a portion of the amount, alleged. Following our corrective action, the findings and sentence 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.

The appellant pled guilty to a withholding-type larceny for the allowances accruing between the effective date of his divorce, February 2009, and his return from deployment, September 2009. This plea is not supported by his statements during the providence inquiry, as he clearly was attempting at all times to account for and correct the overpayment. On the other hand, he does acknowledge that when he returned to Miramar as a single Marine, he falsely claimed that he was married and continued to receive allowances at the higher rate. We note from his stipulation of fact that the appellant estimates his overpayment for the entire charged period, February 2009 through March 2010, to be on the order of \$5000.00 more than he would have been entitled to at "own rate," that is, the rate for a single Marine. We therefore are comfortable concluding that for the period for which he is provident, September 2009 through March 2010, he received an overpayment exceeding \$500.00.

The finding as to the specification of Charge III is affirmed except for the phrase "9 February," and substituting therefor the phrase "21 September." The remaining findings of guilty are affirmed. There being no dramatic change to the penalty landscape, the sentence is affirmed.

For the Court

R.H. TROIDL  
Clerk of Court

Judge Filbert participated in the decision of this case before detaching from the court.