

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

**Before
C.L. REISMEIER, F.D. MITCHELL, M. MCALEVY
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**RICHARD J. MURRAY-BURNS
PRIVATE FIRST CLASS (E-2), U.S. MARINE CORPS**

**NMCCA 201000072
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 4 September 2009.
Military Judge: CAPT Bruce MacKenzie, JAGC, USN.
Convening Authority: Commanding Officer, Headquarters and
Service Battalion, Marine Corps Base, Quantico, VA.
Staff Judge Advocate's Recommendation: Col S.C. Newman,
USMC.
For Appellant: Capt Peter Griesch, USMCR.
For Appellee: Maj Jonathan Nelson, USMC.

13 July 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:

Pursuant to his pleas, a military judge convicted the appellant of unauthorized absence in violation of Article 86 of the Uniform Code of Military Justice, 10 U.S.C. § 886. The appellant was sentenced to confinement for 90 days, forfeiture of \$900.00 pay per month for six months, reduction to pay grade E-1, and a bad-conduct discharge. The convening authority approved the sentence as adjudged. A pretrial agreement had no effect on the sentence.

On appeal, the appellant claims for the first time that he was subjected to illegal, cruel and unusual pretrial punishment

proscribed by Article 13, UCMJ, and the Eighth Amendment to the United States Constitution.¹ After carefully considering the record of trial, the appellant's brief, the Government's response, and the Consent Motion to Attach excerpts from the appellant's medical records, we conclude that the findings and the sentence are correct in law and fact, and that no error materially prejudicial to the substantial rights of the appellant occurred. Arts. 59(a) and 66(c), UCMJ.

We note that at his trial on 4 September 2009, the appellant raised no pretrial motions and entered his guilty pleas. During the sentencing portion of the appellant's court-martial, the military judge specifically inquired whether the defense had a motion for relief from unlawful pretrial punishment or restraint. The appellant's defense counsel responded in the negative. Record at 42. The appellant then made an unsworn statement but did not mention anything regarding the conditions of his pretrial confinement. *Id.* at 44. The military judge announced a sentence which included 90 days of confinement, which was less than the 95 days he had already spent in pretrial confinement. After trial, the appellant submitted clemency matters to the convening authority, but did not raise the issue of his treatment while in pretrial confinement.

Based on the aforementioned facts, we find that the appellant waived this issue and is not entitled to relief. *United States v. Inong*, 58 M.J. 465 (C.A.A.F. 2003); *United States v. Gladue*, 67 M.J. 311 (C.A.A.F. 2009). Accordingly, we affirm the findings and the sentence, as approved by the convening authority.

For the Court

R.H. TROIDL
Clerk of Court

¹ This issue was raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).