

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

**Before  
L.T. BOOKER, E.C. PRICE, J.R. PERLAK  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**IAN M. MORRIS  
SERGEANT (E-5), U.S. MARINE CORPS**

**NMCCA 201000096  
SPECIAL COURT-MARTIAL**

**Sentence Adjudged:** 01 December 2009.

**Military Judge:** Maj Robert Palmer, USMC.

**Convening Authority:** Commanding Officer, 1st Marine Corps  
District, Garden City, NY.

**Staff Judge Advocate's Recommendation:** LtCol E.R. Kleis,  
USMC.

**For Appellant:** CAPT Stephen White, JAGC, USN.

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

**22 April 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, pursuant to his pleas, of two specifications of violating a lawful general order, two specifications of making false a official statement, and one specification of adultery, in violation of Articles 92, 107, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 892, 907, and 934. The military judge sentenced the appellant to confinement for eight months, forfeiture of \$900.00 pay per month for eight months, reduction to pay grade E-1, and a bad-conduct discharge.

The convening authority, pursuant to the terms of a pretrial agreement, approved only forfeitures of \$900.00 pay for one month, reduction to pay grade E-1, and the bad-conduct discharge.

This case is before us without assignment of error. We have carefully considered the record of trial and conclude that the appellant's conviction for adultery under Charge III and its specification must be set aside. We take corrective action below.

### **Background**

The appellant was a married noncommissioned officer on recruiting duty. While so assigned, he violated the lawful general order prohibiting nonprofessional conduct with a young woman recruited into the Marine Corps, awaiting shipment to recruit training. While this conduct was under investigation, he purposefully lied to the investigating officer. The record of trial, both in the providence inquiry and stipulation of fact, amply demonstrate that an adulterous relationship ensued.

### **Failure to State an Offense**

Upon our review, however, it is apparent that the specification in support of the adultery charge fails to allege the intended offense, in that it lacks a required factual allegation: that either party named in the specification was married. For the reasons articulated by the Court of Military Appeals in *United States v. King*, 34 M.J. 95 (C.M.A. 1992), we conclude the specification is defective and the finding of guilty predicated on it cannot stand.

### **Sentence Reassessment**

As a result of our action on the findings, we reassess the sentence in accordance with the principles of *United States v. Moffeit*, 63 M.J. 40, 42 (C.A.A.F. 2006); *United States v. Cook*, 48 M.J. 434, 438 (C.A.A.F. 1998); *United States v. Peoples*, 29 M.J. 426, 428 (C.M.A. 1990); and *United States v. Sales*, 22 M.J. 305, 307-08 (C.M.A. 1986).

In view of the remaining charges and specifications of which the appellant was properly convicted, we are satisfied beyond a reasonable doubt that there has not been a dramatic change in the penalty landscape and that the sentence adjudged would have been no less than that awarded for the remaining charges. The same corpus of evidence involving the appellant's improper sexual relationship and efforts to thwart its discovery was before the military judge, either as substantive evidence of Charges I and II or as evidence properly considered in aggravation thereof.

### **Conclusion**

The findings of guilty of Charge III and its specification are set aside. Charge III and its specification are dismissed. The remaining findings and sentence are affirmed. Following our corrective action, we conclude that there are no remaining errors that are materially prejudicial to the appellant's substantial rights. Arts 59(a) and 66(c), UCMJ.

For the Court

R.H. TROIDL  
Clerk of Court