

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

**Before
J.A. MAKSYM, E.E. GEISER, J.R. PERLAK
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**RANDELL D. REED
PRIVATE (E-1), U.S. MARINE CORPS**

**NMCCA 200900682
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 1 October 2009.

Military Judge: Maj Clay A. Plummer, USMC.

Convening Authority: Commanding Officer, Headquarters and Support Battalion, School of Infantry-East, Training Command, Camp Lejeune, NC.

Staff Judge Advocate's Recommendation: LtCol J. L. Gruter, USMC.

For Appellant: CAPT Johnathan W. Bryan, JAGC, USN.

For Appellee: CAPT M. Claudette Wells, JAGC, USN; LT. Brian C. Burgtorf, JAGC, USN.

22 April 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 two wrongful absence offenses in violation of Article 86, Uniform Code of Military Justice, 10 U.S.C. §§ 886. The appellant also entered a guilty plea to a second charge and single specification of escape from custody, in violation of Article 95, UCMJ. During the court-martial, the Government moved to withdraw the Article 95 offense, which the military judge granted. Record at 36. The

convening authority (CA) 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, in taking his action, erroneously reflects findings of guilty as to Charge II and its specification, the Article 95 offense. The Government does not challenge this assigned error, but in turn pleads that the error has not resulted in prejudice to the appellant. In view of the appellant's substantial prior disciplinary record which includes three nonjudicial punishments and a summary court-martial, we find no prejudice to the appellant.

The court-martial promulgating order contains the error alleged. See RULE FOR COURTS-MARTIAL 1114, MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.). 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.

We also note that the CA, in taking his action, purports to suspend all confinement in excess of 75 days, while crediting the appellant with 80 days of confinement served as of the date of trial. The supplemental court-martial order shall state that any confinement in excess of the 80 days served is suspended, leaving the remaining 10 days of the 90-day sentence subject to suspension and potential vacation, per the terms of the pretrial agreement.

Following these corrections, we are convinced 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 remains. Arts. 59(a) and 66(c), UCMJ. The findings and approved sentence are affirmed. The supplemental court-martial order will properly reflect that Charge II and its specification were withdrawn by the Government. It will also properly reflect that the suspended portion of the sentence to confinement applies to any confinement in excess of 80 days.

For the Court

R.H. TROIDL
Clerk of Court