

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

**Before
C.L. REISMEIER, F.D. MITCHELL, T.R. ZIMMERMANN
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**MICHAEL A. ROBINSON
LANCE CORPORAL (E-3), U.S. MARINE CORPS**

**NMCCA 201000217
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 25 January 2010.
Military Judge: LtCol G.W. Riggs, USMC.
Convening Authority: Commanding Officer, 10th Marine
Regiment, 2d Marine Division, Camp Lejeune, NC.
Staff Judge Advocate's Recommendation: Col W.G. Perez,
USMC.
For Appellant: CAPT Frederic Matthews, JAGC, USN.
For Appellee: Mr. Brian Keller, Esq.

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:

A military judge sitting as a special court-martial convicted the appellant, pursuant to his pleas, of disobeying a lawful order, wrongful use of marijuana, and two specifications of larceny, in violation of Articles 89, 112a, and 121 Uniform Code of Military Justice, 10 U.S.C. §§ 889, 912a, and 921. The military judge sentenced the appellant to confinement for six months, reduction to pay grade E-1, and a bad-conduct discharge. The convening authority (CA) approved the findings and the sentence and, pursuant to the pretrial agreement, suspended all confinement in excess of 120 days.

Although not assigned as error, we find that the military judge erred by not combining the two larceny specifications under Charge II as the providence inquiry and stipulation of fact reflect that they were committed at substantially the same time and place.¹ We will take appropriate corrective action in our decretal paragraph.

We therefore consolidate the two specifications of Charge II into one specification. We also find that upon reassessment this action does not result in a dramatic change in the penalty landscape. See *United States v. Buber*, 62 M.J. 476, 479 (C.A.A.F. 2006). Subject to the corrective action taken above, the findings and the sentence are correct in law and fact and we find that no error materially prejudicial to the substantial rights of the appellant remains. Arts. 59(a) and 66(c), UCMJ. Accordingly, we affirm the findings, as modified above, and the sentence as approved by the CA.

For the Court

R.H. TROIDL
Clerk of Court

¹ The larceny offense, in all likelihood, was charged as two separate specifications because the stolen property belonged to two different Marines. Where there is but one act of larceny, it should be alleged in one specification, notwithstanding the fact that the property belonged to various persons. See MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.), Part IV, ¶ 46c(1)(h)(ii).