

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

**Before
C.L. REISMEIER, E.E. GEISER, J.K. CARBERRY
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**JOSEPH P. SIMONS
LANCE CORPORAL (E-3), U.S. MARINE CORPS**

**NMCCA 200900502
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 15 June 2009.

Military Judge: CAPT James Warden, JAGC, USN.

Convening Authority: Commanding Officer, Marine Corps
Security Force Battalion, Naval Submarine Base, Kings Bay,
GA.

Staff Judge Advocate's Recommendation: Col G.E. Lambert,
USMCR.

For Appellant: Maj Rolando Sanchez, USMCR.

For Appellee: Maj Jonathan Nelson, USMC.

25 February 2010

OPINION OF THE COURT

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.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 conspiracy to steal military property, sale of military property and larceny of military property, in violation of Articles 81, 108, and 121, Uniform Code of Military Justice, 10 U.S.C. §§ 881, 908, and 921. The approved sentence was confinement for four months, reduction to pay grade E-1, and a bad-conduct discharge.

On appeal, the appellant asserts that his right to access his trial defense counsel (TDC) for post-trial clemency matters was unreasonably restricted by the convening authority's refusal

to fund the TDC's travel from Naval Station, Mayport to the brig in Charleston, South Carolina. We note that the appellant was able to speak with his counsel by telephone and was able to exchange documents via facsimile with his TDC.

While the appellant is entitled to effective assistance of counsel, post-trial,¹ such "effective assistance" does not necessarily require the convening authority to provide an appellant with an opportunity for face-to-face consultation with an attorney in connection with a post-trial clemency petition where other means of communication prove adequate. While consultation by telephone and facsimile is undoubtedly less convenient than face-to-face discussion, we find that the appellant's ability to consult with his TDC, post-trial, was not materially prejudiced and that the appellant was able to submit all post-trial clemency matters he wished.² We further find that the convening authority did, in fact, consider both the TDC's and the appellant's clemency submissions.

Having carefully considered the record and the pleadings of the parties, we conclude that the findings and sentence are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant was committed. Arts. 59(a) and 66(c), UCMJ.

The findings and approved sentence are affirmed.

For the Court

R.H. TROIDL

¹ *United States v. Rodriguez*, 60 M.J. 239, 254 (C.A.A.F. 2004).

² *United States v. Miller*, 45 M.J. 149 (C.A.A.F. 1996).