

**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.

**KYLE C. WILLIAMS
SEAMAN RECRUIT (E-1), U.S. NAVY**

**NMCCA 201000073
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 10 December 2009.

Military Judge: CDR Tierney Carlos, JAGC, USN.

Convening Authority: Commanding Officer, Training Support Center, Great Lakes, IL.

Staff Judge Advocate's Recommendation: LT R.T. Wright, JAGC, USN.

For Appellant: LCDR Matthew Schelp, JAGC, USN.

For Appellee: Mr. Brian Keller, Esq.

15 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:

This case is before us without assignment of error. We begin by noting that part of the sentence awarded by the military judge is not in compliance with RULE FOR COURTS-MARTIAL 1003(b)(2), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.) which requires that sentences involving partial forfeitures of pay must be stated in whole dollar amounts. The military judge sentenced the appellant to forfeit "two-thirds pay per month for 5 months." Record at 64. This erroneous sentence is then replicated, without comment or correction, throughout the post-trial processing and is again replicated, uncorrected, in the

action of the convening authority (CA). We will take corrective action in our decretal paragraph.

We next note a discrepancy of one day in the calculation of pretrial confinement credit pertaining to the appellant. The military judge opined and the parties agreed that there had been 51 days of pretrial confinement. *Id.* at 54. In fact, the appellant was entitled to 50 days of credit.¹ The staff judge advocate's recommendation (SJAR) and report of results of trial both correctly indicate the 50 days. The CA, in taking his action, makes no specific reference to pretrial confinement credit, other than by external reference to the record and the SJAR. The number of days that the appellant was in confinement prior to date of trial is capable of determination. In the absence of any assignment of error or any indication in the record that the appellant did not receive his 50 days credit, we find no resultant prejudice. We will take corrective action in our decretal paragraph.

Finally, neither the pretrial agreement nor the CA's action specifies any start date pertaining to the period of the suspended portion of the appellant's sentence. There being no evident agreement among the parties, we find that the period of suspension commenced on the date of the CA's action. *See United States v. Elliott*, 10 M.J. 740 (N.C.M.R. 1981).

After careful consideration of the record, we affirm the findings. We affirm a sentence of a bad-conduct discharge, confinement for a period of 5 months, and forfeiture of \$933.00 pay per month for 5 months. The supplemental court-martial order will note that the appellant was credited with 50 days confinement credit and all confinement in excess of 120 days was suspended for a period of 12 months from 12 January 2010.

For the Court

R.H. TROIDL
Clerk of Court

¹ Pretrial confinement commenced on 21 October 2009 and continued through sentencing on 10 December 2009. *See United States v. DeLeon*, 53 M.J. 658, 660 (Army Ct.Crim.App. 2000) ("Based on the above statutory [18 U.S.C. § 3585] and regulatory [28 C.F.R. § 2.10(a)] authorities, we hold that any part of a day in pretrial confinement must be calculated as a full day for purposes of pretrial confinement credit under *Allen* except where a day of pretrial confinement is also the day the sentence is imposed.")