

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

**Before
L.T. BOOKER, J.K. CARBERRY, E.C. PRICE
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**CHAD A. WINTER
AVIATION ELECTRICIAN'S MATE THIRD CLASS (E-4), U.S. NAVY**

**NMCCA 201000140
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 10 November 2009.

Military Judge: CDR Douglas Barber, JAGC, USN.

Convening Authority: Commanding Officer, Air Test and Evaluation Squadron ONE, Naval Air Station, Patuxent River, MD.

Staff Judge Advocate's Recommendation: CDR P.D. Schmid, JAGC, USN.

For Appellant: CAPT John Bennett, JAGC, USN.

For Appellee: Mr. Brian Keller, Esq.

27 May 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 one specification each of possession with the intent to distribute cocaine and distribution of cocaine, in violation of Article 112a, Uniform Code of Military Justice, 10 U.S.C. § 912a. 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 approved the findings and the sentence as adjudged but, in accordance with the pretrial agreement,

suspended confinement in excess of 1 month for the period of confinement plus 6 months.

Although submitted without any assignments of error, we conclude that Specification 1 of Charge I, possession of cocaine with the intent to distribute, is multiplicitious with specification 2 of Charge I, distribution of the same cocaine, the former being a lesser included offense of the latter. See *United States v. Savage*, 50 M.J. 244 (C.A.A.F. 1999) (holding that convictions for possession with intent to distribute and distribution occurring the same day were multiplicitious). We will take corrective action in our decretal paragraph. Following that action, 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 remains. Arts. 59(a) and 66(c), UCMJ.

The finding of guilty of Specification 1 of Charge I is dismissed. Applying the analysis set forth in *United States v. Sales*, 22 M.J. 305 (C.M.A. 1986) and *United States v. Moffeit*, 63 M.J. 40 (C.A.A.F. 2006), and carefully considering the entire record, we are satisfied beyond a reasonable doubt that there would not have been a dramatic change in the penalty landscape at this special court-martial even if Specification 1 had been dismissed, and that the military judge would not have adjudged a lesser sentence. Art. 66(c), UCMJ. The remaining findings and the approved sentence are affirmed.

For the Court

R.H. TROIDL
Clerk of Court