

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

**Before  
J.A. MAKSYM, R.Q. WARD, M.G. MCALEVY  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**LENNELL T. ROBINSON  
BUILDER CONSTRUCTIONMAN (E-3), U.S. NAVY**

**NMCCA 201100301  
GENERAL COURT-MARTIAL**

**Sentence Adjudged:** 16 March 2011.

**Military Judge:** CAPT David Berger, JAGC, USN.

**Convening Authority:** Commander, U.S. Naval Forces, Japan.

**Staff Judge Advocate's Recommendation:** CDR B. Keith, JAGC, USN.

**For Appellant:** LT Daniel LaPenta, JAGC, USN.

**For Appellee:** Mr. Brian Keller, Esq.

**29 September 2011**

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**OPINION OF THE COURT**  
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**THIS OPINION DOES NOT SERVE AS BINDING PRECEDENT, BUT MAY BE CITED AS  
PERSUASIVE AUTHORITY UNDER NMCCA RULE OF PRACTICE AND PROCEDURE 18.2.**

PER CURIAM:

After careful consideration of the record, submitted without assignment of error, 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. However, we find error in the court-martial order and will order corrective action in our decretal paragraph. Arts. 59(a) and 66(c), Uniform Code of Military Justice, 10 U.S.C. §§ 859(a) and 866(c).

The court-martial order incorrectly reflects findings of not guilty to Specification 2 under Charge II and Specification 1 under Charge III. Those specifications were actually withdrawn and dismissed without prejudice prior to the announcement of findings, as correctly reported in the report of results of trial. We test this error under a harmless error standard. *United States v. Crumpley*, 49 M.J. 538, 539 (N.M.Ct.Crim.App. 1998) (citing *United States v. Kotteakos*, 328 U.S. 750 (1946)). We find that this error did not materially prejudice any of the substantial rights of the appellant. However, the appellant is entitled to have his official records correctly reflect the results of this proceeding. *Id.*

The findings and sentence as approved by the convening authority are affirmed. The supplemental court-martial order will reflect that Specification 2 under Charge II and Specification 1 under Charge III were withdrawn.

For the Court

R.H. TROIDL  
Clerk of Court