

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

**Before  
C.L. REISMEIER, J.K. CARBERRY, M.D. MODZELEWSKI  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**RODY L. BALLESTEROS, JR.  
PRIVATE FIRST CLASS (E-2), U.S. MARINE CORPS**

**NMCCA 201100336  
SPECIAL COURT-MARTIAL**

**Sentence Adjudged:** 11 April 2011.

**Military Judge:** LtCol Stephen F. Keane, USMC.

**Convening Authority:** Commanding Officer, Headquarters and Support Battalion, Marine Corps Base, Camp Pendleton, CA.

**Staff Judge Advocate's Recommendation:** Maj A.T. Young, USMC.

**For Appellant:** CDR R.D. Evans, Jr., JAGC, USN.

**For Appellee:** Capt David N. Roberts, USMC.

**25 October 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:

A military judge sitting as a special court-martial, convicted the appellant, pursuant to his pleas, of two specifications of unauthorized absence, in violation of Article 86, Uniform Code of Military Justice, 10 U.S.C. § 886. The appellant was sentenced to 100 days confinement, reduction to pay grade E-1, forfeitures of "\$960 per month" for four months, and a bad-conduct discharge. The convening authority (CA)

approved the sentence as adjudged and, pursuant to a plea agreement, suspended all confinement in excess of time served.

In his sole assignment of error, the appellant correctly notes that the military judge failed to indicate that the forfeitures were to apply to pay only and not to pay and allowances. See RULE FOR COURTS-MARTIAL 1003(b)(2), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.).

Since a special court-martial can only adjudge forfeiture of pay and the amount of forfeitures announced fell within the amount that could be adjudged, we can discern no material prejudice to the substantial rights of the appellant. The accused is, however, entitled to a corrected promulgating order. *United States v. Crumpley*, 49 M.J. 538, 539 (N.M.Ct.Crim.App. 1998).

Although not assigned as error, we note the CA's action suspends confinement for twelve months from the date of the action. The pretrial agreement required that the period of suspension would run for the period of time served plus 12 months. The appellant completed his "time served" on the date of sentencing. The period of suspension therefore began on that date.

Therefore we affirm the findings and the sentence as approved below, but the supplemental promulgating order will indicate that the adjudged, approved, and affirmed forfeitures were of \$960 pay per month for four months. The supplemental promulgating order will also indicate that confinement in excess of time served is suspended from the date of trial.

For the Court

R.H. TROIDL  
Clerk of Court