

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

**Before
J.A. MAKSYM, J.R. PERLAK, R.Q. WARD
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**LOREN J. LEE
PRIVATE FIRST CLASS (E-2), U.S. MARINE CORPS**

**NMCCA 201100337
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 14 March 2011.

Military Judge: LtCol Thomas Sanzi, USMC.

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

Staff Judge Advocate's Recommendation: LtCol A.M. Ray, USMC.

For Appellant: CDR Don Evans, JAGC, USN.

For Appellee: CDR Kimberly D. Hinson, JAGC, USN; LT Ritesh K. Srivastava, JAGC, USN.

27 December 2011

OPINION OF THE COURT

**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 and three specifications of wrongful use of controlled substances, in violation of Articles 86 and 112a, Uniform Code of Military Justice, 10 U.S.C. §§ 886 and 912a. The military judge sentenced the appellant to 180 days confinement, reduction to pay grade E-1,

forfeitures of \$970.00 per month for six months, and a bad-conduct discharge. The convening authority (CA) approved the findings and sentence as adjudged and ordered it executed.¹ In accordance with the pretrial agreement, the CA suspended confinement in excess of time-served.

The appellant submits two assignments of error: first, that the record is incomplete for appellate review; and second, that the military judge failed to specify that the sentence of forfeitures applied to pay only and not pay and allowances.

We have examined the record of trial, the appellant's assignments of error, and the pleadings. We conclude that the findings and the 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.

Incomplete Record of Trial

The appellant asserts that the record is incomplete because the clemency matters submitted by the trial defense counsel to the convening authority were not included in the record of trial filed with this court. In his brief, the appellant includes a copy of the missing clemency matters. Appellant's Brief of 26 Aug 2011 at Exhibit 1. While not originally included with the record of trial filed with this court, the record of trial is now complete and we can perform our statutory function of reviewing "the entire record." Art. 66(c), UCMJ. See *United States v. Williams*, No. 9501819, 1996 CCA LEXIS 516 (N.M.Ct. Crim. App. 30 Sep 1996).

Inaccurate Sentence

In his second assignment of error, the appellant correctly notes that the military judge and the convening authority failed to indicate that the sentence of forfeitures applied 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 in this case, we can discern no material prejudice to the substantial rights of the appellant. The appellant is, however, entitled to a correct promulgating order.

¹ To the extent that the convening authority's action purports to direct that the punitive discharge will be executed after final judgment it is a legal nullity. See *United States v. Tarniewicz*, 70 M.J. 543, (N.M.Ct.Crim.App. 2011).

United States v. Crumpley, 49 M.J. 538, 539 (N.M.Ct.Crim.App. 1998).

Conclusion

The findings and sentence as approved by the convening authority are affirmed. The supplemental court-martial promulgating order will indicate that the adjudged, approved, and affirmed forfeitures are for \$970.00 pay per month for six months.

For the Court

R.H. TROIDL
Clerk of Court