

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

**Before
C.L. REISMEIER, B.L. PAYTON-O'BRIEN, D.R. LUTZ
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**JOSEPH A. ENGEL
HOSPITALMAN THIRD CLASS (E-4), U.S. NAVY**

**NMCCA 201100512
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 6 July 2011.

Military Judge: CAPT Kevin O'Neil, JAGC, USN.

Convening Authority: Commanding Officer, Naval Medical Center, San Diego, CA.

Staff Judge Advocate's Recommendation: CAPT M.E. MOSS, JAGC, USN.

For Appellant: CAPT Stephen White, JAGC, USN.

For Appellee: Mr. Brian Keller, Esq.

28 December 2011

OPINION OF THE COURT

After careful consideration of the record, submitted without assignment of error, we affirm the findings and sentence as approved by the convening authority. Art. 66(c), Uniform Code of Military Justice, 10 U.S.C. § 866(c). Although not raised as error by the appellant, we note that the convening authority's action failed to suspend the bad-conduct discharge as required by the terms of the pretrial agreement. An accused who pleads guilty pursuant to a pretrial agreement is entitled to the fulfillment of any promises made by the Government as part of that agreement. *Santobello v. New York*, 404 U.S. 257, 262 (1971); *United States v. Smith*, 56 M.J. 271, 272 (C.A.A.F. 2002). Thus, the convening authority erred by failing to implement the terms of the pretrial agreement. When a convening

authority fails to take action required by a pretrial agreement, we will enforce the agreement. *United States v. Cox*, 49 C.M.R. 69, 72 (C.M.A. 1972). The supplemental court-martial shall indicate the bad-conduct discharge is suspended for 12 months from 3 October 2011.

For the Court

R.H. TROIDL
Clerk of Court