

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

**Before
L.T. BOOKER, J.K. CARBERRY, D.R. LUTZ
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**BRANDON P. BULLARD
PRIVATE FIRST CLASS (E-2), U.S. MARINE CORPS**

**NMCCA 201100041
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 2 November 2010.

Military Judge: CDR Douglas P. Barber, Jr., JAGC, USN.

Convening Authority: Commanding Officer, Headquarters and Service Battalion, Marine Corps Base, Quantico, VA.

Staff Judge Advocate's Recommendation: LtCol C.M. Greer, USMC.

For Appellant: CAPT Salvador A. Dominguez, JAGC, USN.

For Appellee: CAPT M. Claudette Wells, JAGC, USN; Capt Mark V. Balfantz, USMC.

17 May 2011

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 of unauthorized absence, one specification of making a false official statement, and one specification of wrongful use of marijuana, violations, respectively, of Articles 86, 107, and 112a, Uniform Code of Military Justice, 10 U.S.C. §§ 886, 907, and 912a. The appellant was sentenced to 7 months confinement and a bad-conduct discharge. The convening authority (CA) approved the sentence as adjudged, but suspended the

confinement in excess of 150 days in accordance with the pretrial agreement.

In the appellant's only assignment of error,¹ he asserts that the CA erred in taking his action when he incorrectly summarized the charges and specifications to which the appellant pleaded guilty. The Government correctly points out that the errors are not in the CA's action, but in the promulgating order. The specification under Charge I, violation of Article 86, UCMJ, omitted the word "until" when describing the date the absence ended, and the specification under Charge III, violation of Articles 112a, UCMJ, added surplus words to the end of the specification, to wit: "9 September 2010." These errors were carried forward from the staff judge advocate's recommendation. However, the record of trial and report of results of trial, which the CA reviewed prior to taking his action, correctly stated the language of the specifications.

We are convinced 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. Accordingly, the findings and the sentence as approved by the CA are affirmed.

However, the appellant is entitled to accurate records regarding his court-martial. *United States v. Crumpley*, 49 M.J. 538, 539 (N.M.Ct.Crim.App. 1998). We therefore direct that the supplemental court-martial order accurately reflect Charge I and its specification by adding the word "until" prior to the language "9 September 2010", and Charge III and its specification by deleting the language "9 September 2010."

For the Court

R.H. TROIDL
Clerk of Court

¹ After first approving the sentence as adjudged, the CA stated in his action, "In accordance with the UCMJ, Rules for Courts-Martial, applicable regulations, the pretrial agreement, and this action, the sentence is ordered executed. Pursuant to Article 71, UCMJ, the punitive discharge will be executed after final judgment." To the extent that this language purports to direct anything, it is a legal nullity. Article 71 is restrictive in its wording (a discharge "may not be" executed until after final action). It is not directive as is the language of the CA's action here ("will be executed"). The determination as to whether a discharge "will be" executed cannot be made until after judgment as to the legality of the proceedings following final appellate review or action by the secretary concerned.