

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

**Before
J.A. MAKSYM, D.R. LUTZ, G.G. GERDING
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**CESAR R. BURGOS
LANCE CORPORAL (E-3), U.S. MARINE CORPS**

**NMCCA 201100004
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 26 August 2010.

Military Judge: LtCol Paul L. Starita, USMCR.

Convening Authority: Commanding Officer, 1st Battalion, 1st Marines, 1st Marine Division (Rein), FMF, Camp Pendleton, CA.

Staff Judge Advocate's Recommendation: Col D.K. Margolin, USMC.

For Appellant: Capt Peter Griesch, USMCR.

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

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 recklessly spoiling property and drunken operation of a motor vehicle, in violation of Articles 109 and 111, Uniform Code of Military Justice, 10 U.S.C. §§ 909 and 911. On 26 August 2010, the military judge sentenced the appellant to confinement for one year, forfeiture of "\$900.00 per month" for 12 months, reduction to pay grade E-1, and a bad-conduct discharge. On 21 December 2010, the convening authority (CA) approved the sentence as adjudged and, pursuant to a plea agreement, suspended all

confinement in excess of 180 days for a period of 12 months from the date of sentencing.

Although not assigned as error, we note the military judge failed to indicate when announcing sentence that the forfeitures awarded the appellant 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.). Instead, he simply said "\$900 per month." The report of results of trial indicates the military judge awarded a sentence that included forfeiture of \$900.00 pay per month for 12 months. However, the CA's promulgating order reflects a sentence that includes forfeiture of \$900.00, without any indication that the forfeiture is of pay, and not pay and allowances.

The appellant did not object to this oversight by the military judge at trial or on appeal. We can discern no material prejudice to the substantial rights of the appellant. However, the appellant is entitled to a corrected promulgating order.

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 \$900.00 pay per month for 12 months.

For the Court

R.H. TROIDL
Clerk of Court