

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

**Before
J.A. MAKSYM, B.L. PAYTON-O'BRIEN, T.R. ZIMMERMANN
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**MICHAEL F. EMMONS
MASTER-AT-ARMS THIRD CLASS (E-4), U.S. NAVY**

**NMCCA 201000453
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 7 April 2010.

Military Judge: CAPT David Berger, JAGC, USN.

Convening Authority: Commanding Officer, U.S. Naval Base
Guam.

Staff Judge Advocate's Recommendation: LT D.C. Kontny,
JAGC, USN.

For Appellant: LCDR Matthew T. Schelp, JAGC, USN.

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

10 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, consistent with his pleas, of making a false official statement and assault, violations of Articles 107, and 128, Uniform Code of Military Justice, 10 U.S.C. §§ 907 and 928. The military judge sentenced the appellant to confinement for four months, reduction to pay grade E-1, "to forfeit two-thirds pay per month for four months," and a bad-conduct discharge from the U.S. Navy. In his action, the convening authority (CA) initially stated that "the sentence as adjudged is approved." He then: 1) ordered executed "[c]onfinement for twelve (12) months;" 2) in accordance with the pretrial

agreement, suspended all confinement; and 3) stated that "[t]otal forfeitures is [sic] approved and executed."

This case was submitted without specific assignment of error. In the course of our review, however, we have determined that errors were committed both at trial and in the post-trial processing of this case. Following our corrective action, the findings and the sentence are correct in law and fact and no error materially prejudicial to the substantial rights of the appellant remains. Arts. 59(a) and 66 (c), UCMJ.

At trial, the military judge improperly announced the sentence to forfeitures by not stating "the exact amount in whole dollars to be forfeited each month and the number of months the forfeitures will last." RULE FOR COURTS-MARTIAL 1002(b)(2), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.). The CA did not correct this error in his action, so we will take corrective action below.

After trial, we note that the combined court-martial order and CA's action contains a number of errors. First, the document incorrectly states that the adjudged sentence included confinement for twelve months vice the four months the military judge actually adjudged. Second, the action purports to approve, order executed, and suspend twelve months of confinement. Third, the action purports to approve and order executed "[t]otal forfeitures." Fourth, although the pretrial agreement required the Government to withdraw Specification 2 of Charge I following the acceptance of the appellant's pleas, the Government did not do so on the record and the military judge entered a finding of not guilty to that specification. The court-martial order incorrectly states that Specification 2 of Charge I was withdrawn and dismissed. The appellant has not alleged that he was prejudiced by any of these errors; nonetheless we will take and order corrective action in our decretal paragraph.

We affirm the findings and only so much of the sentence as provides for reduction to pay grade E-1, confinement for four months, forfeiture of \$964.00 pay per month for four months, and a bad-conduct discharge. We direct that the supplemental court-martial order correctly reflect the adjudged sentence, that the confinement was suspended in its entirety for a period of twelve months from 28 July 2010, and that the appellant was found not guilty of Specification 2 under Charge I.

For the Court

R.H. TROIDL
Clerk of Court