

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

**Before
L.T. BOOKER, J.K. CARBERRY, G.G. GERDING
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**DAVID C. HAM
LANCE CORPORAL (E-3), U.S. MARINE CORPS**

**NMCCA 201000627
GENERAL COURT-MARTIAL**

Sentence Adjudged: 22 July 2010.

Military Judge: LtCol Gregory L. Simmons, USMC.

Convening Authority: Commanding General, 1st Marine
Division (Rein), Camp Pendleton, CA.

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

For Appellant: Capt Peter Griesch, USMC.

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

24 March 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 each of conspiracy to commit larceny, larceny, housebreaking, and receipt of stolen property, in violation of Articles 81, 121, 130, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 881, 921, 930, and 934. The convening authority (CA) approved the sentence of confinement for 165 days, reduction to pay grade E-1, and a bad-conduct discharge from the U.S. Navy.

Although not assigned as an error, we note that 106 days elapsed from the date the appellant commenced post-trial

confinement until the date the CA took his action. In his action, pursuant to the terms of a pretrial agreement, the CA suspended confinement in excess of three months. Although the appellant presumably was not confined in excess of three months, his sentence to confinement continued to run until the date the CA took his action since there was no provision in the pretrial agreement to defer the execution of any unserved confinement prior to the CA's action. See *United States v. Lamb*, 22 M.J. 518, 519 (N.M.C.M.R 1986). As a result, the CA could not suspend confinement in excess of three months. We will take corrective action in our decretal paragraph to "eliminate any risk of prejudice." *Id.*

Accordingly, we affirm the findings and sentence as approved by the CA. The supplemental court-martial order will reflect that all confinement in excess of 106 days was suspended for a period of 12 months commencing on 4 November 2010.

For the Court

R.H. TROIDL
Clerk of Court