

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

**Before
J.A. MAKSYM, J.R. PERLAK, B.L. PAYTON-O'BRIEN
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**SEAN M. HUNT
SERGEANT (E-5), U.S. MARINE CORPS**

**NMCCA 201000466
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 16 April 2010.

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

Convening Authority: Commanding Officer, Instruction Battalion, The Basic School, Training Command, Quantico, VA.

Staff Judge Advocate's Recommendation: LtCol J. Gruter, USMC.

For Appellant: LT Michael R. Torrissi, JAGC, USN.

For Appellee: Maj Elizabeth A. Harvey, USMC.

18 January 2011

OPINION OF THE COURT

**IN ACCORDANCE WITH RUE 18.2, NMCCA RULES OF PRACTICES 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 unauthorized absence, drunk driving, drunk on duty, and reckless endangerment, violations of Article 86, 111, 112, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 886, 911, 912, and 934. The Government moved to withdraw and dismiss the two specifications under Additional Charge II (Article 128), a motion which the military judge granted. Record at 75. The convening authority (CA) approved the appellant's sentence of confinement for 150 days, reduction to pay grade E-1, and a bad-conduct discharge.

The appellant raises two assignments of error and avers that new post-trial processing is required because (1) the staff judge advocate's recommendation (SJAR) erroneously recites a not guilty finding rather than a withdrawal and dismissal of the two Article 128 offenses, and (2) the CA erroneously recites in the promulgating order a not guilty finding to the two Article 128 offenses rather than a withdrawal and dismissal. The Government concedes the SJAR and promulgating order contain the error but, in turn, pleads that the error has not resulted in prejudice to the appellant, and declares that the only appropriate remedy is for this court to order a correction to the promulgating order.

Both the SJAR and the court-martial promulgating order contain the error alleged. Service members are entitled to records that correctly reflect the results of court-martial proceedings. See *United States v. Crumpley*, 49 M.J. 538, 539 (N.M.Ct.Crim.App. 1998). We shall order the necessary corrective action.

We find no prejudice to the appellant by the errors in the SJAR and promulgating order. In the promulgating order, the CA indicates that prior to taking his action, he considered the results of trial, the record of trial, the pretrial agreement, both of the defense counsel's clemency letters, as well as the recommendation of the staff judge advocate. The record of trial, the pretrial agreement, and the trial defense counsel's letter pointing out the error in the SJAR, were sufficient to make the CA aware that the two Article 128 specifications were withdrawn and dismissed at trial.

Although not assigned as error, we note that the CA approved the sentence, which included a bad-conduct discharge, and then stated, "In accordance with the UCMJ, Rules of Courts-Martial, applicable regulations, the pretrial agreement, and this action, the sentence is ordered executed." Under Article 71(c)(1), UCMJ, a punitive discharge cannot be ordered executed until, after the completion of direct appellate review, there is a final judgment as to the legality of the proceedings. Thus, to the extent that the CA's action purported to execute the bad-conduct discharge, it was a nullity. *United States v. Bailey*, 68 M.J. 409 (C.A.A.F. 2009).

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. The findings and the sentence are affirmed. The supplemental court-martial order will reflect that

the two specifications under Additional Charge II were withdrawn and dismissed by the Government.

For the Court

R.H. TROIDL
Clerk of Court