

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

**Before
J.K. CARBERRY, F.D. MITCHELL, G.G. GERDING
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**MICHAEL W. KENDRICK II
PRIVATE (E-1), U.S. MARINE CORPS**

**NMCCA 201000489
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 28 April 2010.

Military Judge: LtCol Steven P. Logan, USMCR.

Convening Authority: Commanding Officer, 7th Marine Regiment Remain Behind Element, 1st Marine Division (Rein), Marine Corps Air Ground Combat Center, Twentynine Palms, CA.

Staff Judge Advocate's Recommendation: Col D.K. Margolin, USMC (22 Mar 11); Maj J.V. Munoz, USMC (20 Aug 10); Maj A.T. Snow, USMC (12 Jul 10).

For Appellant: LT Michael B. Hanzel, JAGC, USN.

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

16 June 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 unauthorized absence and missing movement by neglect, in violation of Articles 86 and 87, Uniform Code of Military Justice, 10 U.S.C. §§ 886 and 887. On 28 April 2010, the military judge sentenced the appellant to confinement for 120 days, forfeiture of "\$600.00 per month" for four months, and a bad-conduct discharge. On 26 August 2010, the convening authority (CA) approved the sentence

as adjudged and, pursuant to a plea agreement, suspended all confinement in excess of time served (52 days) for a period of six months from the date of sentencing.

This case was initially submitted to this court without assignment of error. Upon our review pursuant to Article 66, UCMJ, we noted the addendum to the staff judge advocate's recommendation (SJAR) did not fully inform the CA of his options in response to a request for clemency submitted by trial defense counsel. Accordingly, on 31 January 2011, we set aside the CA's action and returned the case to the Judge Advocate General for remand to the CA for new post-trial processing.

An addendum to the SJAR was prepared and a substitute CA took action on the case on 29 March 2011.¹ As did the original CA, the substitute CA approved the sentence as adjudged and, pursuant to a plea agreement, suspended all confinement in excess of time served for a period of six months from the date of sentencing. The case is again before this court for review pursuant to Article 66, UCMJ.

Although not assigned as error, we note the military judge failed to indicate 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 "\$600 per month." The report of results of trial repeats the error, indicating the military judge awarded a sentence that included forfeiture of \$600.00 per month. The CA's action then approved a sentence that included forfeiture of \$600.00 without indication 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 discern no material prejudice to the substantial rights of the appellant. The appellant is entitled to a correct promulgating order, however.

Also, though not assigned as error, we note the CA's action of 31 January 2011 incorrectly indicates in paragraph two that the appellant was "arraigned and tried" "at a General [sic] Court-Martial convened by this command." The appellant was in fact arraigned and tried at a special court-martial convened by Commanding Officer, 7th Marine Regiment Remain Behind Element, 1st Marine Division (Rein), FMF. The appellant is entitled to have his record correctly reflect the type of court-martial.

We affirm the findings and the sentence as approved below, but the supplemental promulgating order will indicate that the

¹ The unit that originally convened the appellant's court-martial had been disestablished by the time the case was returned for a new action. The Judge Advocate General therefore forwarded the case to the general court-martial convening authority for action. See Manual of the Judge Advocate General, Judge Advocate General Instruction 5800.7E § 0151(b)(2) (Ch-2, 16 Sep 2008).

adjudged, approved, and affirmed forfeitures were of \$600.00 pay per month for four months. The supplemental promulgating order will also indicate that the appellant was arraigned and tried before a special court-martial.

For the Court

R.H. TROIDL
Clerk of Court