

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

**Before  
C.L. REISMEIER, J.K. CARBERRY, F.D. MITCHELL  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**KRISTEN M. MANGUM  
EQUIPMENT OPERATOR CONSTRUCTIONMAN (E-3), U.S. NAVY**

**NMCCA 201100092  
SPECIAL COURT-MARTIAL**

**Sentence Adjudged:** 29 October 2010.  
**Military Judge:** CAPT Carole J. Gaasch, JAGC, USN.  
**Convening Authority:** Commanding Officer, Fleet and  
Industrial Supply Center, San Diego, CA.  
**For Appellant:** Capt Peter H. Griesch, USMCR.  
**For Appellee:** LT Kevin D. Shea, JAGC, USN.

**28 June 2011**

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**OPINION OF THE COURT**  
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**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 her pleas, of one specification of violating a lawful general order for smoking spice, and one specification each for use, distribution, and introduction with intent to distribute ecstasy, in violation of Articles 92 and 112a, Uniform Code of Military Justice, 10 U.S.C. §§ 892 and 912a. The approved sentence was eight months confinement, reduction to pay grade E-1, forfeiture of \$900.00 pay per month for eight months, and a bad-conduct discharge. Pursuant to a pretrial agreement, the convening authority suspended all confinement in excess of seven months, as well as the adjudged forfeitures.

The appellant claims ineffective assistance of counsel based on a perceived mishandling of evidence of uncharged misconduct. We apply a two-pronged test to determine if an appellant was denied her Sixth Amendment right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984); *United States v. Edmond*, 63 M.J. 343, 350-351 (C.A.A.F. 2006). First, a counsel's performance must be deficient, meaning it fell below an objective standard of reasonableness. *Edmond*, 63 M.J. at 351 (citing *United States v. Davis*, 60 M.J. 469, 473 (C.A.A.F. 2005)). Second, there must be a reasonable probability that, but for the counsel's alleged deficiency, there would have been a different result. *Id.* When a claim of ineffective assistance of counsel fails the second prong, there is no need to decide the first. *United States v. Quick*, 59 M.J. 383, 386 (C.A.A.F. 2004); *United States v. McConnell*, 55 M.J. 479, 481 (C.A.A.F. 2001). Using this approach, we are firmly convinced that the appellant has failed to demonstrate that she received ineffective assistance of counsel.

Through a stipulation of fact, the appellant admitted to purchasing ecstasy pills and introducing those same pills onboard Naval Base San Diego on multiple occasions. This particular portion of the stipulation covered a longer period of time than what was alleged in the corresponding specification. After discovering the discrepancy, the military judge asked both trial and defense counsel for an explanation. The trial counsel agreed that any occasion which fell outside the time frame provided for in the specification would be irrelevant on the merits, but should be considered as evidence in aggravation during sentencing. The defense counsel initially and ultimately agreed with the position advocated by the trial counsel.<sup>1</sup> Later, the appellant clarified that during the enlarged time period she had brought ecstasy on base twice, however, only one of those occasions fell within the time frame given in the specification for introduction. Record at 34-35.

Assuming that trial defense counsel erred by advising the appellant to enter a stipulation of fact containing uncharged misconduct, it is abundantly clear that the military judge did not consider this evidence when deciding a sentence. The military judge said:

Before I announce my sentence, I want to indicate for the record that with regard to Specification 3, despite what it says in the stipulation, I did not consider the extended time frame. Based, on my notes, the only evidence was the one-time introduction in February. So not only did I not only adjudge a sentence on that time frame, but I did not consider the extended period reflected with regard to that particular specification. The extended period reflected in the stipulation, I did not consider that in aggravation.

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<sup>1</sup> Defense counsel entered a short-lived objection in the interim.

Record at 142. The argument that there was reasonable probability the sentence awarded by the military judge would have been different, but for the trial defense counsels' "mishandling" of uncharged misconduct evidence contradicts the military judge's statement in the record indicting she found only a "one-time" introduction as a basis for both findings and sentencing. Accordingly, the appellant's request for a new sentencing hearing is without any basis in the record.

Although not assigned as an error, we note that both the legal officer's recommendation and the promulgating order erroneously state that the appellant's conviction under Specification 3 of Charge II was for possession, rather than introduction with intent to distribute. While the appellant was obviously not prejudiced by this error incorrectly listing a conviction for the lesser offense of possession, we shall order the correction in our decretal paragraph. See *United States v. Crumpley*, 49 M.J. 538, 539 (N.M.Ct.Crim.App. 1998).

The findings and the sentence are correct in law and fact and no error materially prejudicial to the substantial rights of the appellant occurred. Arts. 59(a) and 66(c), UCMJ. The findings and the sentence are affirmed. The supplemental court-martial order will reflect that for Specification 3 under Charge II the appellant was convicted of wrongful introduction with intent to distribute a Schedule I controlled substance onto an installation used by the armed forces.

For the Court

R.H. TROIDL  
Clerk of Court