

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

**Before  
C.L. REISMEIER, R.E. BEAL, D.O. HARRIS  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**JUSTIN H. MATTHEWS  
CORPORAL (E-4), U.S. MARINE CORPS**

**NMCCA 201000660  
GENERAL COURT-MARTIAL**

**Sentence Adjudged:** 18 August 2010.

**Military Judge:** LtCol G.W. Riggs, USMC.

**Convening Authority:** Commanding General, 2d Marine Aircraft Wing, II Marine Expeditionary Force, Cherry Point, NC.

**Staff Judge Advocate's Recommendation:** Col S.C. Newman, USMC. **Addendum:** Capt G.T. Funk, USMC.

**For Appellant:** CAPT Paul Jones, JAGC, USN.

**For Appellee:** CDR Kevin Flynn, JAGC, USN; Capt Mark V. Balfantz, USMC.

**19 April 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:**

Pursuant to his pleas, a general court-martial composed of a military judge alone convicted the appellant of drunk driving, wrongful distribution of prescription medications, and receipt of stolen property in violation of Articles 111, 112a, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 911, 912a, and 934. The military judge sentenced the appellant to confinement for time served (180 days), reduction to pay grade E-1, and a bad-conduct discharge. The convening authority approved the sentence as adjudged.

The appellant alleges that the convening authority's promulgating order misstates his plea and the findings to Specification 1 under Charge III and purports to execute the adjudged bad-conduct discharge. As relief, the appellant asks for a new post-trial action. The Government concedes error with respect to the court-martial order, but opposes a remand. We hold that this error can be remedied without returning the record to the convening authority. The findings and sentence are correct in law and fact, and the error does not materially prejudice a substantial right of the appellant. See Arts. 59(a) and 66(c), UCMJ.

In his brief, the appellant contends that he has been prejudiced by the error in the convening authority's promulgating order because "the Convening Authority took action based upon false information." Appellant's Brief of 3 Feb 2011 at 2. We cannot agree. The pretrial agreement reflects that, *inter alia*, the appellant and convening authority agreed that the appellant would plead not guilty to Specification 1 under Charge III. The results of trial and the staff judge advocate's recommendation both correctly reflect the appellant's plea to and the Government's withdrawal of Specification 1 under Charge III, and all of those documents were considered by the convening authority prior to taking action. General Court-Martial Order No. 13-2010 of 22 Nov 2010. Therefore, the discrepancy in the promulgating order appears to be a mere typographical error. We can find no evidence in the record, and the appellant does not cite to any, suggesting that the convening authority was somehow misled as to the appellant's criminality.

While we find no prejudice to the appellant from this error, he is entitled to correction of his official records. Art. 59(a), UCMJ; *United States v. Glover*, 57 M.J. 696, 697-98 (N.M.Ct.Crim.App. 2002); *United States v. Crumpley*, 49 M.J. 538, 539 (N.M.Ct.Crim.App. 1998). Thus, we will order appropriate relief in our decretal paragraph. Similarly, to the extent the convening authority's action purports to execute the bad-conduct discharge, that portion of the action is a nullity and requires no further corrective action. See *United States v. Bailey*, 68 M.J. 409 (C.A.A.F. 2009) (unpublished opinion).

Accordingly, the findings and sentence are affirmed. The supplemental court-martial order shall indicate that the appellant pled not guilty to Specification 1 under Charge III, and that the specification was withdrawn and dismissed.

For the Court

R.H. TROIDL  
Clerk of Court