

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

**Before
L.T. BOOKER, J.K. CARBERRY, D.R. LUTZ
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**YORDAN RODRIGUEZ
LANCE CORPORAL (E-3), U.S. MARINE CORPS**

**NMCCA 201000693
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 17 September 2010.

Military Judge: LtCol David M. Jones, USMC.

Convening Authority: Commanding Officer, Headquarters and Service Battalion, Marine Corps Base, Okinawa, Japan.

Staff Judge Advocate's Recommendation: Col W.G. Perez, USMC.

For Appellant: CAPT Johnathan w. Bryan, JAGC, USN.

For Appellee: LCDR Clayton G. Trivett, JAGC, USN; Capt Mark V. Balfantz, USMC.

28 April 2011

OPINION OF THE COURT

**IN ACCORDANCE WITH RULE 18.2, NMCCA RULES OF PRACTICE AND PROCEDURE, THIS
OPINION DOES NOT SERVE AS PRECEDENT.**

LUTZ, Judge:

A military judge sitting as a special court-martial convicted the appellant, pursuant to his pleas, of one specification of unauthorized absence, three specifications of failing to obey an order or regulation, two specifications of making false official statements, and one specification of breaking restriction, in violation of Articles 86, 92, 107, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 886, 892, 907, and 934. The approved sentence included confinement for 89 days, reduction to pay grade E-2, forfeiture of \$500.00 pay per month for six months, and a bad-conduct discharge.

The appellant raises the following assignment of error: the convening authority erred in taking his action when he failed to give judicially ordered confinement credit in violation of RULE FOR COURTS-MARTIAL 1107(f)(1), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.).

The appellant does not dispute that he did, in fact, receive credit for his pretrial confinement against his sentence and was duly released from confinement on time. Rather, the appellant merely complains that the convening authority did not note the appellant's pretrial confinement in his action. R.C.M. 1107(f) does not require that a convening authority include legal pretrial confinement in his action. See R.C.M. 1107(f)(4).

We have carefully examined the record of trial and the pleadings of the parties and conclude 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 occurred. Arts. 59(a) and 66(c), UCMJ.

The findings and the sentence as approved by the convening authority are affirmed.

Senior Judge CARBERRY concurs.

BOOKER, Senior Judge (concurring):

The appellant admits that he suffered no harm from the "failure" of the convening authority (CA) to note his credit under *United States v. Allen*, 17 M.J. 126 (C.M.A. 1984), a tribute, no doubt, to the attention that the confinement facility pays to the comings and goings of its population. I am not completely convinced that the Rule requiring that the CA order credit for illegal pretrial confinement absolves him from listing, in the court-martial order, *Allen* credit, but I likewise cannot point to any authority saying that the majority is incorrect in its interpretation of RULE FOR COURTS-MARTIAL 1107, MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.). The better practice is probably for the CA to note *Allen* credit (which is distinct from "judicially ordered" credit; see *United States v. Wilson*, 503 U.S. 329, 335-36 (1992)) in his court-martial order, even if the order issues weeks or months after the appellant is released from confinement in many cases. This case emphasizes, once again, that there are no insignificant milestones in the court-martial process, and I encourage all concerned to pay careful attention to details, rights, and responsibilities.

For the Court

R.H. TROIDL
Clerk of Court