

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

**Before
C.L. REISMEIER, F.D. MITCHELL, J.A. MAKSYM
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**JASON A. STEVENS
LANCE CORPORAL (E-3), U.S. MARINE CORPS**

**NMCCA 201000280
GENERAL COURT-MARTIAL**

Sentence Adjudged: 8 January 2010.

Military Judge: CDR Tierney Carlos, JAGC, USN.

Convening Authority: Commanding General, II Marine Expeditionary Force, Camp Lejeune, NC.

Staff Judge Advocate's Recommendation: Col B.T. Palmer, USMC.

For Appellant: Capt Bow Bottomly, USMC.

For Appellee: Maj Elizabeth Harvey, USMC.

18 January 2011

OPINION OF THE COURT

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.

PER CURIAM:

A military judge sitting as a general court-martial convicted the appellant, in accordance with his pleas, of violation of a lawful general order, two specifications of wrongful sexual contact, larceny, two specifications of forcible sodomy, and impersonating an official of the United States Government, in violation of Articles 92, 120, 121, 125, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 892, 920, 921, 925, and 934. The appellant was sentenced to eight years confinement, forfeiture of all pay and allowances, reduction to pay grade E-1, and a dishonorable discharge. The convening authority (CA) approved the sentence as adjudged, but in

accordance with the pretrial agreement, suspended all confinement in excess of 60 months.

The appellant asserts two assignments of error. First, he asserts that the military judge abused his discretion by limiting his order for administrative confinement credit to 14 days based on the Government's failure to abide by Secretary of the Navy Instruction 1640.9C (3 Jan 2006) (addressing command visitations and obligations toward command members in pretrial confinement).¹ Second, he claims that the military judge erroneously calculated pretrial confinement credit.

We agree with the appellant's contention that one day of additional confinement credit is due, and shall order it in our decretal paragraph. After taking corrective action, we conclude the findings and the sentence are correct in law and fact, and that no error materially prejudicial to the substantial rights of the appellant remains. Arts. 59(a) and 66(c), UCMJ.

The appellant was initially placed in pretrial confinement on 3 July 2009, as a result of allegations of wrongful sexual contact and forcible sodomy. On 1 September 2009, he was released from pretrial confinement. He was re-confined during the early morning hours of 9 October 2009 as a result of the allegations that formed the basis of the order violation, larceny, and impersonation charges.

All parties at trial agreed that the appellant was entitled to 155 days of pretrial confinement credit, pursuant to *United States v. Allen*, 17 M.J. 126 (C.M.A. 1984), a conclusion repeated in both the staff judge advocate's recommendation and the convening authority's action. Our calculation differs by one day, resulting in a credit of 156 days (61 days for the period of 3 July to 1 September 2009, and 95 days for the period of 9 October 2009 to 12 January 2010).

The appellant's claim that he is entitled to 158 days confinement is predicated on his calculation stemming from the second period of confinement, as all agree that a total of 61 days credit should be credited to the first confinement period. The appellant claims 8 October 2009 as the initiation of re-confinement, despite the confinement order at Prosecution Exhibit 2 that indicated he was received for confinement at 0320 9 October 2009. Similarly, he claims credit for 12 January 2010, the day his confinement became an adjudged sentence. Our calculation indicates he is entitled to neither as *Allen* credit.

Regarding the appellant's other assignment of error, we conclude that the military judge did not abuse his discretion in ordering 14 days administrative credit against the adjudged confinement. Notwithstanding the appellant's various arguments to the contrary, we find nothing in the record to suggest a

¹ Raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

mandate for additional credit, the omission of which would constitute an abuse of discretion. The appellant was provided a full seabag during his first period of confinement, was released from confinement, and had access to all of his personal effects during the period of release. We, like the military judge, can discern no basis for further relief based on that period of confinement. Adding the *Allen* credit and the administratively ordered credit, the appellant is entitled to total of 169 days credit.

As the appellant himself admitted when testifying on the motion, although he endured some period of time without his full seabag after reconfinement, he was provided a full seabag, albeit with uniforms from the previous uniform season,² within two weeks of his return to the brig. Similarly, although he did not return to the brig with contact solution or a case for his contact lenses, when he notified the brig of this deficiency at the end of October 2009, he was immediately provided with both. Command visits, while not entirely within the letter of SECNAVINST 1640.9C, both occurred and resulted in items being retrieved by the command for the appellant. To the extent that they did not occur weekly, they were not so deficient as to have inflicted a hardship on the appellant. They did not amount to punishment, and their frequency was entirely explained by command members as being predicated on the operational tempo of the command, limited command manning, and the brig's requirement that command representatives be in the paygrade of E-6 or above. In short, with the exception of not having a full seabag for a two week period, command deviations from the instruction neither inflicted hardship upon the appellant nor rose to the level of an abuse of discretion by confinement officials.

Confinement in violation of a service regulation may support confinement credit where pretrial confinement authorities have abused their discretion. *United States v. Williams*, 68 M.J. 252, 253 (C.A.A.F. 2010). The military judge's findings were well-supported by the record, and we find no reason to disturb his exercise of discretion in ordering 14 days credit against confinement to account for the temporary deprivation attendant to a lack of a full seabag on reconfinement.

² The fact that the appellant was provided with desert uniforms rather than woodland uniforms after the seasonal change of uniforms does not amount to a denial of clothing.

Conclusion

The findings and sentence as approved are affirmed. The appellant will be credited with an additional one day of confinement served.

For the Court

R.H. TROIDL
Clerk of Court