

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

**Before
F.D. MITCHELL, R.E. BEAL, M. MCALEVY
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**MARQUISE L. TURNER
CORPORAL (E-4), U.S. MARINE CORPS**

**NMCCA 201100058
GENERAL COURT-MARTIAL**

Sentence Adjudged: 6 October 2010.

Military Judge: Maj Eric Emerich, USMC.

Convening Authority: Commanding General, 2d Marine
Logistics Group, Camp Lejeune, NC.

Staff Judge Advocate's Recommendation: Maj K.A. Parrella,
USMC. **Addendum:** Maj J.R. Cherry, USMC.

For Appellant: CAPT Paul Jones, JAGC, USN.

For Appellee: Mr. Brian Keller, Esq.

23 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 general court-martial convicted the appellant, consistent with his pleas, of two specifications of failure to obey a lawful order, false official statement, and two specifications of assault with a means likely to produce death or grievous bodily harm, in violation of Articles 92, 107, and 128, Uniform Code of Military Justice, 10 U.S.C. §§ 892, 907, and 928. The appellant was sentenced to forfeiture of \$500.00 for 17 months, confinement for 17 months,

reduction to pay grade E-2, and a bad-conduct discharge. The convening authority approved the sentence as adjudged.¹

Although not assigned as error, we find that the convening authority failed to suspend confinement in excess of 12 months for a period of 12 months from the date of trial, as required by the pretrial agreement. Instead, the court-martial order merely recites the staff judge advocate's recommendation, stating: "The sentence may be approved as adjudged, however, you have agreed to suspend all confinement in excess of 12 months for a period of 12 months from the date of trial, at which time, unless sooner vacated, the suspended portion will be remitted without further action."

An accused who pleads guilty pursuant to a pretrial agreement is entitled to have the Government fulfill any promises made as part of that agreement. *Santobello v. New York*, 404 U.S. 257, 262 (1971); *United States v. Smith*, 56 M.J. 271, 272 (C.A.A.F. 2002).

The fact that the appellant has not yet, even with good time credit, served the unsuspended portion of his sentence indicates that he was not prejudiced by this error. He is of course, entitled to receive the full benefit of his pretrial agreement. We will take appropriate action in our decretal paragraph rather than directing the convening authority to do so. See *United States v. Cox*, 46 C.M.R. 69, 72 (C.M.A. 1972). Following our corrective action, we conclude that the findings and 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.

Conclusion

The findings and sentence, as approved by the convening authority, are affirmed. All approved confinement in excess of 12 months is suspended for 12 months from the date of trial, at which time, unless sooner vacated, the suspended portion will be remitted without further action. The supplemental court-martial

¹ We note that the convening authority approved the sentence, which included a bad-conduct discharge, and then stated, "In accordance with the Uniform Code of Military Justice, the Manual for Courts-Martial, applicable regulations, and this action, the sentence is ordered executed." Under Article 71(c)(1), UCMJ, a punitive discharge cannot be ordered executed until, after the completion of direct appellate review, there is a final judgment as to the legality of the proceedings. Thus, to the extent that the convening authority's action purported to execute the bad-conduct discharge, it was a nullity. *United States v. Bailey*, 68 M.J. 409 (C.A.A.F. 2009)

order will reflect this correction to the convening authority's action.

For the Court,

R.H. TROIDL
Clerk of Court