

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

**Before
B.L. PAYTON-O'BRIEN, J.A. MAKSYM, M. FLYNN
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**TYLER C. BOCKMAN
FIRST LIEUTENANT (O-2), U.S. MARINE CORPS**

**NMCCA 201100627
GENERAL COURT-MARTIAL**

Sentence Adjudged: 8 September 2011.

Military Judge: LtCol Charles Hale, USMC.

Convening Authority: Commanding General, Training Command,
Quantico, VA.

Staff Judge Advocate's Recommendation: Maj C.M. Burnett,
USMC.

For Appellant: CAPT Ross Leuning, JAGC, USN.

For Appellee: Mr. Brian Keller, Esq.

31 May 2012

OPINION OF THE COURT

**THIS OPINION DOES NOT SERVE AS BINDING PRECEDENT, BUT MAY BE CITED AS
PERSUASIVE AUTHORITY UNDER NMCCA RULE OF PRACTICE AND PROCEDURE 18.2.**

PER CURIAM:

A military judge sitting as a general court-martial convicted the appellant, pursuant to his pleas, of violating a lawful general order, making a false official statements, wrongfully using and possessing oxycodone, and larceny, in violation of Articles 92, 107, 112a, and 121, Uniform Code of Military Justice, 10 U.S.C. §§ 892, 907, 912a, and 921. The

military judge sentenced the appellant to confinement for 200 days, a fine of \$200.00, and dismissal from the Naval service.

In taking his action, the convening authority (CA) correctly listed the sentence adjudged and then stated, in relevant part:

In accordance with the pretrial agreement, the adjudged sentence to confinement in excess of 90 days will be suspended for a period of six months. The remaining part of the sentence consisting of a fine of \$200.00, and a dismissal is approved.

General Court-Martial Order 14-2011 of 25 Nov 2011 at 3. The CA further stated that "[i]n accordance with the Uniform Code of Military Justice, the Manual for Courts-Martial, applicable regulations, and this action, the sentence is ordered executed." *Id.*

The case was submitted to the court on its merits. Mindful of the requirements of RULE FOR COURTS-MARTIAL 1107(d)(1), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.) and our recent decision in *United States v. Warren*, 71 M.J. 505 (N.M.Ct.Crim.App. 2012), we note that, while the CA explicitly approved the adjudged fine and dismissal, he did not explicitly approve the confinement awarded. Rather, he stated that confinement in excess of 90 days would be suspended. Nevertheless, because he could not suspend that portion of the sentence without first approving it, we find that the CA approved the confinement adjudged. See *United States v. Wilson*, 65 M.J. 140, 141 (C.A.A.F.2007) (when language of CA's action is "facially complete and unambiguous its meaning must be given effect"). While not a model of clarity, we find that, by specifically suspending confinement in excess of 90 days, the CA necessarily approved the adjudged confinement and then suspended confinement in excess of 90 days.¹ Additionally, to the extent that the CA's action purports to execute the dismissal, it was a nullity. *United States v. Bailey*, 68 M.J. 409 (C.A.A.F. 2009). We again emphasize the care that must be taken when drafting the CA's action and reiterate the recommendation to consult the "Forms For Action" in the Manual, App. 16 at A16-1-A16-6. See *Wilson*, 65 M.J. at 141 (C.A.A.F.2007); *United States v. Politte*, 63 M.J. 24, 26 n.11 (C.A.A.F.2006).

¹ The fact that neither the appellant nor his counsel raised this issue is further evidence that they understood what sentence was approved. See *United States v. Politte*, 63 M.J. 24, 27 (C.A.A.F.2006) (Crawford, J., concurring).

We are convinced 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 was committed. Arts. 59(a) and 66(c), UCMJ. The findings and the sentence as approved by the CA are affirmed.

For the Court

R.H. TROIDL
Clerk of Court