

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

**Before  
J.A. MAKSYM, R.E. BEAL, M. FLYNN  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**JOHNATHAN R. CARILLO  
LANCE CORPORAL (E-3), U.S. MARINE CORPS**

**NMCCA 201100232  
SPECIAL COURT-MARTIAL**

**Sentence Adjudged:** 21 January 2011.

**Military Judge:** LtCol Stephen Keane, USMC.

**Convening Authority:** Commanding Officer, Marine Corps Air Station, Yuma, Az.

**Staff Judge Advocate's Recommendation:** Maj H.J. Redman, USMC.

**For Appellant:** CDR Luis Leme, JAGC, USN.

**For Appellee:** Mr. Brian Keller, Esq.

**24 January 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 special court-martial convicted the appellant of violations of Articles 86, 92, 107, 112a, 121, 123, 123a, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 886, 892, 907, 912a, 921, 923, 923a, and 934. The appellant was sentenced to confinement for eight months, forfeiture of \$964.00 pay per month for eight months, reduction to pay grade E-1, and a bad-conduct discharge.

Although this case was submitted without assigned error, we note two errors in the promulgating order. First, the sole specification of Charge I incorrectly states the unauthorized

absence terminated 4 October 2010, whereas the correct date is 2 October 2010. Second, the promulgating order incorrectly records the appellant's plea to the sole specification of Additional Charge IV as being a violation of Article 123a instead of Article 123. We find no prejudice to the appellant's substantial rights as a result of these errors; nonetheless the appellant is entitled to have "his official records correctly reflect the results of" his court-martial. *United States v. Crumpley*, 49 M.J. 538, 539 (N.M.Ct.Crim.App. 1998). We therefore order appropriate action in our decretal paragraph.

We have also considered whether, pursuant to *United States v. Fosler*, 70 M.J. 225 (C.A.A.F. 2011), the sole specification under Charge V fails to state an offense because it does not allege the terminal element of Article 134. As we previously discussed in *United States v. Hackler*, \_\_\_ M.J. \_\_\_, No. 201100323, 2011 CCA LEXIS 371 (N.M.Ct.Crim.App. 22 Dec 2011), the appellant's case is significantly distinguishable from *Fosler* because: 1) the appellant did not challenge the adequacy of the specification at trial; 2) he pled guilty to this specification; 3) the military judge ensured that the appellant understood the terminal element; 4) the appellant provided a factual basis to establish he was guilty of both conduct prejudicial to good order and discipline and conduct of a nature to bring discredit upon the armed forces; and 5) he stipulated that his conduct was prejudicial to good order and discipline. Accordingly, we find no prejudice.

We direct that the supplemental court-martial order accurately reflect the appellant's unauthorized absence ended on 2 October 2010 and that Additional Charge IV was a violation of Article 123. We otherwise conclude the approved findings and 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. We affirm the findings and the sentence as approved by the convening authority.

For the Court

R.H. TROIDL  
Clerk of Court