

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

**Before
J.R. PERLAK, J.K. CARBERRY, R.E. BEAL
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**DAVID A. CHEATUM
PERSONNEL SPECIALIST SECOND CLASS (E-5), U.S. NAVY**

**NMCCA 201100534
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 29 July 2011.

Military Judge: CDR Sherry King, JAGC, USN.

Convening Authority: Commanding Officer, USS NIMITZ (CVN 68).

Staff Judge Advocate's Recommendation: LCDR M.S. Brewen,
JAGC, USN.

For Appellant: CAPT Diane L. Karr, JAGC, USN.

For Appellee: LCDR Deborah Sue Mayer, JAGC, USN; LT Benjamin
J. Voce-Gardner, JAGC, USN.

29 March 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, pursuant to his pleas, of seventeen specifications of larceny in violation of Article 121, Uniform Code of Military Justice, 10 U.S.C. § 921. The appellant was sentenced to four months confinement and a bad-conduct discharge. The convening authority (CA) approved the adjudged sentence but, pursuant to a pretrial agreement (PTA), suspended the bad-conduct discharge for a

period of 12 months and deferred and waived automatic forfeitures. Another term of the PTA required the CA to remit the appellant's automatic reduction to pay grade E-1.¹ However, in his action on the sentence the CA merely commented that the automatic reduction was "effected as of the date of this action." Special Court-Martial Order No. 3-11 dated 5 Oct 2011.

After publishing his action and forwarding the record for appellate review, the CA issued "Amended Special Court-Martial Order No. 3-11" dated 25 October 2011. In this amended action, the CA removed the sentence ordering the automatic reduction in pay grade "effected," but did not remit the automatic reduction.

The appellant assigns two errors related to the promulgating order and CA's action: (1) the promulgating order fails to indicate the pleas and findings to the seventeen specifications alleging violations of Article 121, UCMJ; and, (2) the CA failed to remit the automatic reduction as required by the PTA. He requests that we remand the record to the CA for new post-trial processing. The Government concedes the errors and argues that the proper remedy is for this court to order a corrected supplemental court-martial order since the appellant has failed to demonstrate any prejudice.

Initially we note that RULE FOR COURTS-MARTIAL 1107(f)(2), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.) sets out when a CA may unilaterally modify an initial action. None of those conditions having been met in this case, the CA was not authorized to issue "Amended Special Court-Martial Order No. 3-11" dated 25 October 2011 and it is a legal nullity.

Concerning the first assigned error, although the appellant has failed to demonstrate any prejudice, nonetheless he is entitled to accurate records regarding his court-martial. *United States v. Crumpley*, 49 M.J. 538, 539 (N.M.Ct.Crim.App. 1998). We will order corrective action in our decretal paragraph.

As to the second assigned error, although the appellant has apparently not been subjected to the automatic reduction in pay grade and thus has received the benefit of his bargain. Once again he is entitled to accurate records regarding his court-martial, *id.*, and we will order corrective action in our decretal paragraph.

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)

¹ See Art. 58a, UCMJ; Manual of the Judge Advocate General, Judge Advocate General Instruction 5800.7E § 0152c(2) (Ch-2 16 Sep 2008).

and 66(c), UCMJ. The findings and the sentence are affirmed. We direct that the supplemental court-martial order accurately reflect the appellant's pleas and the findings as to each of the seventeen specifications under Charge I, violations of Article 121, UCMJ. Likewise, the supplemental order shall reflect that the automatic reduction to pay grade E-1 was remitted as of 5 October 2011 and that the period of suspension of the bad-conduct discharge is for twelve months from 5 October 2011.

For the Court

R.H. TROIDL
Clerk of Court