

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

**Before
J.A. MAKSYM, B.L. PAYTON-O'BRIEN, R.Q. WARD
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**CARL D. COLLINS
OPERATIONS SPECIALIST
PETTY OFFICER SECOND CLASS (E-5), U.S. NAVY**

**NMCCA 201100538
GENERAL COURT-MARTIAL**

Sentence Adjudged: 28 June 2011.

Military Judge: CDR Douglas Barber, JAGC, USN.

Convening Authority: Commander, Navy Region, Mid-Atlantic, Norfolk, VA.

Staff Judge Advocate's Recommendation: CDR F.D. Hutchison, JAGC, USN.

For Appellant: CAPT Diane Karr, JAGC, USN.

For Appellee: LCDR Deborah S. Mayer, JAGC, USN; LT Benjamin 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 general court-martial convicted the appellant, pursuant to his pleas, of two specifications of violating a lawful general order, one specification of false official statement, five specifications of damaging personal property, six specification of larceny, and

one specification of wrongful appropriation, violations of Articles 92, 107, 109, and 121, Uniform Code of Military Justice, 10 U.S.C. §§ 892, 907, 909, and 921. The appellant was sentenced to 18 months confinement, a fine of \$11,000, and a bad-conduct discharge. The convening authority (CA) approved the sentence as adjudged.

In the appellant's summary assignment of error, he avers that the convening authority's action is incomplete because it fails to defer automatic forfeiture of pay and allowances as required by the terms of the pretrial agreement (PTA). We find the appellant's assignment of error to be without merit. However, we note that the court martial order contains an error in the summary of the charged offenses which requires corrective action, which we will order in our decretal paragraph.

Deferment of Automatic Forfeitures

In this case, under the terms of a PTA, automatic forfeitures would be deferred on the condition that the appellant established and maintained a dependent's allotment. Appellate Exhibit VII at 1. The PTA went on to provide that:

[t]his Agreement constitutes the Accused's request for, and the Convening Authority's approval of, deferment of automatic forfeitures pursuant to Article 58b(a)(1), UCMJ. The period of deferment will run from the date automatic forfeitures would otherwise become effective under Article 58b(a)(1), UCMJ, until the date the Convening Authority acts on the sentence."

Id. Thus, the terms of the PTA itself approved deferral of automatic forfeiture of pay, which was self-executing once the appellant established the allotment. The appellant established the allotment; in his pleadings he acknowledges that his dependent actually received the deferred forfeitures, and additionally was receiving the waived forfeitures pursuant to the terms of the PTA.

The appellant avers, however, without citing any authority for his position, that once automatic forfeitures are deferred, the CA is required to state as such in his action. He asserts that failure to do so makes his action incomplete. We know of no such requirement for a CA to provide in the action a provision for deferment of automatic forfeitures. The only requirement that an action granting a deferment be included in

the CA's action is a deferment of confinement. See RULES FOR COURTS-MARTIAL 1101(c)(4) and 1107(f)(4)(E), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.).

However, we do note that the court-martial order states incorrectly that the date of the charged offense, in Specification 1 of Charge I, is "13 January 2011" when in fact the offense date was "13 January 2010." No prejudice has been alleged and we find none. However, the appellant is entitled to have his court-martial records accurately reflect the proceedings. *United States v. Crumpley*, 49 M.J. 538, 539 (N.M.Ct.Crim.App. 1998). We will address the remedy in our decretal paragraph.

Conclusion

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 was committed. Arts. 59(a) and 66(c), UCMJ. The findings and sentence as approved by the CA are affirmed. We direct that the supplemental court-martial order correctly list that the date of the charged offense in Specification 1 of Charge I is 13 January 2010.

For the Court

R.H. TROIDL
Clerk of Court