

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

**Before  
J.R. PERLAK, M.D. MODZELEWSKI, C.K. JOYCE  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**ALBERT CORONADO, JR.  
LANCE CORPORAL (E-3), U.S. MARINE CORPS**

**NMCCA 201200076  
SPECIAL COURT-MARTIAL**

**Sentence Adjudged:** 28 November 2011.

**Military Judge:** LtCol Chris J. Thielemann, USMC.

**Convening Authority:** Commanding Officer, I Marine Expeditionary Force Headquarters Group, I Marine Expeditionary Force, Camp Pendleton, CA.

**Staff Judge Advocate's Recommendation:** Capt C.M. Olmsted, USMC.

**For Appellant:** CDR Michael C. Pallesen, JAGC, USN.

**For Appellee:** LT Steven M. Shepard, JAGC, USN; Capt Mark V. Balfantz, USMC.

**12 September 2012**

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**OPINION OF THE COURT**  
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**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 one specification of unauthorized absence, one specification of wrongful use of methamphetamine, one specification of wrongful introduction of cocaine, and three specifications of violating a lawful general order by purchasing, transporting, and keeping

for sale an AK-47 assault rifle, in violation of Articles 86, 92, and 112a, Uniform Code of Military Justice, 10 U.S.C. §§ 886, 892, and 912a. The appellant was sentenced to 12 months confinement, reduction to pay grade E-1, forfeiture of \$978.00 pay per month for 12 months, and a bad-conduct discharge. Pursuant to a pretrial agreement, the convening authority (CA) suspended confinement in excess of 180 days.

The appellant raises one assignment of error: that the CA failed to consider the appellant's clemency request prior to taking his action, noting that the CA did not explicitly reference the clemency request in his action.

We have examined the record of trial, the assignment of error, and the Government's response. We conclude that the findings and the sentence are correct in law and fact and that no error was committed that was materially prejudicial to the substantial rights of the appellant. Arts. 59(a) and 66(c), UCMJ.

#### **Consideration of Clemency Matters**

The military judge sentenced the appellant on 28 November 2011. On 9 January 2012, the staff judge advocate (SJA) completed his initial post-trial recommendation informing the CA that while action on the guilty findings or sentence is a matter within his discretion, he "must consider the results of trial (enclosure (1)), [the SJA's] recommendation, any addendum thereto, and any post-trial matters submitted by the defense." The SJA recommended the CA approve the sentence as adjudged. On 18 January 2012, the SJA's recommendation was served on the trial defense counsel. On 27 January 2012, the trial defense counsel submitted a two-page clemency letter (with no enclosures) to the SJA requesting "that [the] Bad Conduct Discharge be disapproved, and that [the appellant] instead be separated with an Other than Honorable characterization of service." As part of an addendum to his original recommendation, dated 2 February 2012, the SJA forwarded the clemency letter to the CA, containing language that "[p]ost-trial matters submitted by the defense are contained in the enclosure," and informing the CA that he is "required to consider these matters in determining whether to approve or disapprove any of the findings of guilty and the action [he takes] on the sentence." The SJA again recommended the CA approve the sentence as adjudged. The next day, 3 February 2012, the CA took final action on the case, approving the sentence as adjudged, noting that "[p]rior to taking action in

the case, I considered the results of trial, the recommendation of the Staff Judge Advocate, and the record of trial." The appellant asserts that because the CA fails to mention clemency matters in his action, the CA did not consider the appellant's clemency request prior to taking final action.

A careful examination of the record fails to reveal any support for the appellant's single assignment of error. To the contrary, we note that the appellant's clemency petition of 27 January 2012 is included in the record of trial. Further, when the SJA forwarded the case to the CA for his review and action, he not only included the clemency request as an enclosure, but also explicitly advised the CA that he must now carefully consider the clemency matters prior to taking action.

Article 60, UCMJ, and RULE FOR COURTS-MARTIAL 1107, MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.), required the CA to consider clemency materials submitted by the appellant pursuant to R.C.M. 1105 and 1106(f). However, *United States v. Stephens*, 56 M.J. 391, 392 (C.A.A.F. 2002), expressly points out that it is well-settled law that there is no requirement that the CA state in his final action what materials were reviewed in reaching a final decision. His doing so may be presumed absent evidence to the contrary.<sup>1</sup> Further, it is also well-settled law that where, as in this case, the clemency petition is attached to the record of trial and predates the CA's action, there is "more than a mere presumption that the [CA] considered the appellant's petition."<sup>2</sup> The appellant has offered nothing to suggest that this settled law should not apply in this instance. We find this assignment of error to be without merit and decline to provide the relief requested.

### Conclusion

The findings and the sentence as approved by the CA are affirmed.

For the Court

R.H. TROIDL  
Clerk of Court

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<sup>1</sup> *United States v. Doughman*, 57 M.J. 653, 655 (N.M.Ct.Crim.App. 2002).

<sup>2</sup> *Id.* (citation and internal quotation marks omitted).