

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

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

**UNITED STATES OF AMERICA**

**v.**

**ISIAH D. FAGINS  
CORPORAL (E-4), U.S. MARINE CORPS**

**NMCCA 201100460  
GENERAL COURT-MARTIAL**

**Sentence Adjudged:** 12 May 2011.

**Military Judge:** LtCol David Jones, USMC.

**Convening Authority:** Commanding General, 1st Marine  
Aircraft Wing, Iwakuni, Japan.

**Staff Judge Advocate's Recommendation:** LtCol J.M. Henry,  
USMC.

**For Appellant:** Maj Jeffrey Liebenguth, USMC.

**For Appellee:** LT Joseph Moyer, JAGC, USN.

**22 May 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 panel of members with enlisted representation, sitting as a general court-martial convicted the appellant, contrary to his pleas, of two specifications of making a false official statement and one specification of wrongful possession of ecstasy with the intent to distribute, in violation of Articles 107 and 112a, Uniform Code of Military Justice, 10 U.S.C. §§ 907 and 912a. The appellant was sentenced by the members to

confinement for three months, reduction to pay grade E-1, forfeiture of all pay and allowances, and a bad-conduct discharge. After considering the recommendation of his staff judge advocate,<sup>1</sup> the convening authority (CA) approved the sentence as adjudged.<sup>2</sup>

The appellant's sole assignment of error is that the military judge abused his discretion by failing to properly instruct the members. After carefully reviewing the record of trial, the assigned error, and the Government's response,<sup>3</sup> we find that the matter raised by the appellant does not merit relief. We conclude 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.

Although not assigned as error, the court-martial order (CMO) fails to list all charges and specifications on which the appellant was arraigned. See RULE FOR COURTS-MARTIAL 1114(c)(1), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.). The sole specification of Charge V and Specification 2 of Additional Charge II were withdrawn and dismissed by the Government after arraignment. Record at 18-19. The CMO also fails to indicate that the appellant was sentenced to total forfeitures. The appellant is entitled to have "his official records reflect the results of" his court-martial. *United States v. Crumpley*, 49

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<sup>1</sup> In his recommendation to the CA, the staff judge advocate (SJA) noted two companion cases, *United States v. Lance Corporal Anthony Williams* and *United States v. Sergeant Aziz C. Guiamelon*. Although noting the companion cases, the SJA's recommendation (SJAR) did not identify the offenses of which Lance Corporal Williams and Sergeant Guiamelon were found guilty or the sentences awarded and approved in their cases. The requirement to note companion cases by a CA is contained in the Manual of the Judge Advocate General, Judge Advocate General Instruction 5800.7E § 0151a(5) (Ch-2, 16 Sep 2008). The purpose of the requirement for the CA to note companion cases is to ensure that the CA makes an informed decision when taking action. There is no requirement to include companion cases in an SJAR under RULE FOR COURTS-MARTIAL 1106, MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.). *United States v. Ortiz*, 52 M.J. 739, 741 (N.M.Ct.Crim.App. 2000). We recommend that in addition to simply noting the case, the SJAR, at a minimum, include the findings and sentence of the companion cases.

<sup>2</sup> To the extent that the convening authority's action purports to direct that the punitive discharge will be executed after final judgment it is a legal nullity. See *United States v. Tarniewicz*, 70 M.J. 543 (N.M.Ct.Crim.App. 2011).

<sup>3</sup> The military judge issued two certificates of correction to the record of trial, which corrected, *inter alia*, the assigned error relating to the findings instruction.

M.J. 538, 539 (N.M.Ct.Crim.App. 1998). We find no prejudice to the appellant with regard to these errors but will order appropriate action in our decretal paragraph.

### **Conclusion**

The findings and sentence are affirmed. We direct that the supplemental CMO (1) accurately reflect all charges and specifications on which the appellant was arraigned; and (2) reflect the appellant's sentence, including the total forfeitures.

For the Court

R.H. TROIDL  
Clerk of Court