

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

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

UNITED STATES OF AMERICA

v.

**JEROME KYAN
PRIVATE FIRST CLASS (E-2), U.S. MARINE CORPS**

**NMCCA 201200172
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 11 January 2012.

Military Judge: Maj Eric Emerich, USMC.

Convening Authority: Commanding Officer, Headquarters and
Headquarters Squadron, Marine Corps Air Station, Cherry
Point, NC.

Staff Judge Advocate's Recommendation: LtCol K.S. Woodward,
USMC.

For Appellant: CDR Edward Hartman, JAGC, USN.

For Appellee: LCDR Gregory R. Dimler, JAGC, USN.

31 August 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 plea, of one specification of unauthorized absence terminated by apprehension, in violation of Article 86, Uniform Code of Military Justice, 10 U.S.C. § 886. The appellant was sentenced to confinement for 120 days, reduction to pay grade E-1, and to

be discharged from the Marine Corps with a bad-conduct discharge. The convening authority approved the sentence as adjudged and, except for the bad-conduct discharge, ordered the sentence executed. As an act of clemency, the convening authority suspended confinement in excess of time served as of 13 January 2012.

The appellant raises a single assignment of error: that his sentence of a bad-conduct discharge is unjustifiably severe.¹ We have examined the record of trial, the assignment of error, and the Government's answer. We conclude that the findings and sentence are correct in law and fact and that no materially prejudicial error was committed. See Arts. 59(a) and 66(c), UCMJ. The appellant was absent from the Marine Corps without authorization for over four years. During this period, he began a new career as a real estate agent in utter disregard to his superseding commitment to the Marine Corps. Further, the appellant did not voluntarily return to military control. He was apprehended by U.S. Marshals at his home after the Marshals learned of his unauthorized absence status from appropriate authorities. As such, we specifically conclude that the sentence is appropriate in this case. *United States v. Baier*, 60 M.J. 382, 384-85 (C.A.A.F. 2005); *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988); *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982).

Conclusion

We affirm the findings and the sentence as approved by the convening authority.

For the Court

R.H. TROIDL
Clerk of Court

¹ The appellant raises this issue pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).