

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

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

**UNITED STATES OF AMERICA**

**v.**

**KEITH A. NORMAN  
GAS TURBINE SYSTEMS TECHNICIAN  
THIRD CLASS (E-4), U.S. NAVY**

**NMCCA 201200276  
SPECIAL COURT-MARTIAL**

**Sentence Adjudged:** 3 April 2012.

**Military Judge:** CAPT Kevin O'Neil, JAGC, USN.

**Convening Authority:** Commanding Officer, USS GARY (FFG 51).

**Staff Judge Advocate's Recommendation:** LT J.L. Myers, JAGC, USN.

**For Appellant:** CAPT Stephen White, JAGC, USN.

**For Appellee:** LT Ian MacLean, JAGC, USN.

**27 November 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 unauthorized absence, possession of a controlled substance, and breaking restriction, in violation of Articles 86, 112a, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 886, 912a, and 934. The appellant was sentenced to 87 days confinement, reduction to pay grade E-1, forfeiture of \$900.00 pay per month for two months,

and a bad-conduct discharge. The convening authority approved the sentence as adjudged.

In his sole assignment of error, the appellant correctly notes that the convening authority failed to comply with the provisions of the plea agreement. We will take action in our decretal paragraph.

The appellant was sentenced on 3 April 2012. He served his confinement at the Naval Consolidated Brig Miramar, and was released, in accordance with the terms of the pretrial agreement, by brig personnel, on 16 April 2012. The convening authority did not take his action until 20 June 2012. On 19 July 2012, the appellant was administratively separated from the United States Navy with a general discharge under honorable conditions.<sup>1</sup> No forfeitures were ever collected from the appellant.

An accused who pleads guilty pursuant to a pretrial agreement is entitled to the fulfillment of any promises made by the Government as part of that agreement. *Santobello v. New York*, 404 U.S. 257, 262 (1971); *United States v. Smith*, 56 M.J. 271, 272 (C.A.A.F. 2002). When a convening authority fails to take action required by a pretrial agreement, this court has authority to enforce the agreement. *United States v. Cox*, 46 C.M.R. 69, 72 (C.M.A. 1972). We will take corrective action in our decretal paragraph.

The findings and sentence are affirmed. The supplemental court-martial order shall indicate that the adjudged forfeitures, confinement in excess of 75 days, and the punitive discharge were suspended for a period of 12 months commencing on 20 June 2012 and that the suspended punitive discharge was remitted on 19 July 2012 by virtue of the appellant's administrative discharge. Following this correction, no error materially prejudicial to the substantial rights of the appellant remains. Arts. 59(a) and 66(c), UCMJ.

For the Court

R.H. TROIDL  
Clerk of Court

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<sup>1</sup> An administrative discharge issued prior to execution of an approved punitive discharge remits the punitive discharge. See *United States v. Watson*, 69 M.J. 415, 416-17 (C.A.A.F. 2011); *United States v. Van Riper*, 50 M.J. 89, 91-92 (C.A.A.F. 1999).