

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

**Before
J.R. PERLAK, M.D. MODZELEWSKI, G.G. GERDING
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**TREY M. PORTER
PRIVATE (E-1), U.S. MARINE CORPS**

**NMCCA 201100605
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 23 August 2011.

Military Judge: Col Deborah M. McConnell, USMC.

Convening Authority: Commanding Officer, Combat Logistics
Regiment 2, 2d Marine Logistics Group, Camp Lejeune, NC.

Staff Judge Advocate's Recommendation: Capt I.D. Pedden,
USMC.

For Appellant: Maj S. Babu Kaza, USMCR.

For Appellee: Mr. Brian K. Keller, Esq.

19 April 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 pleas, of unauthorized absence, violation of a lawful general order, wrongful use of marijuana, and communicating a threat, in violation of Articles 86, 92, 112a, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 886, 892, 912a, and 934. The military judge sentenced the appellant to confinement for 7 months, reduction to pay

grade E-1, forfeiture of \$978.00 per month for 7 months, and a bad-conduct discharge. On 4 November 2011, the convening authority (CA) approved the sentence as adjudged.

Although not assigned as error, we note the pretrial agreement (PTA) required the CA to suspend confinement in excess of 120 days "for the period of confinement served plus 6 months thereafter, at which time, unless sooner vacated, the suspended portion will be remitted without further action." The PTA also constituted the appellant's request for, and the convening authority's approval of, deferment of the suspended confinement and "good time" days "from the date of sentencing until the date the convening authority acts on the sentence."

On the date of his court-martial, the appellant had served 73 days of pretrial confinement. After announcing the sentence, the military judge discussed the sentence limitation portion of the PTA with the appellant. Regarding suspension of confinement in excess of 120 days, the military judge asked the parties if the period of suspension was to run from the date of trial or the date the appellant would ultimately be released from confinement. The parties agreed that the period of suspension would continue for six months beginning on the date the appellant was released from confinement.

Regardless of whether the military judge and the parties properly interpreted the PTA, that became the law of the case and the CA was bound by this interpretation. By 4 November 2011, when the CA took his action in this case, the appellant had already been released from confinement. Therefore, the CA erred when he suspended confinement in excess of 120 days from the date of his action.

There being no indication that the suspended sentence was properly vacated, and over 6 months having passed since the appellant was released from confinement, the suspended confinement has already been remitted. We affirm the findings and only so much of the sentence as extends to confinement for 120 days, forfeiture of \$978.00 pay per month for 7 months, and a bad-conduct discharge.

For the Court

R.H. TROIDL
Clerk of Court