

**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.

**KYLE N. ROBERTS
MISSILE TECHNICIAN THIRD CLASS (E-4), U.S. NAVY**

**NMCCA 201200328
GENERAL COURT-MARTIAL**

Sentence Adjudged: 27 March 2012.

Military Judge: CDR Douglas P. Barber, Jr., JAGC, USN.

Convening Authority: Commander, Navy Region, Mid-Atlantic,
Norfolk, VA.

Staff Judge Advocate's Recommendation: CDR F.D. Hutchison,
JAGC, USN.

For Appellant: CDR Christopher J. Geis, JAGC, USN.

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

31 October 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 general court-martial convicted the appellant, pursuant to his pleas, of a single specification of knowingly possessing child pornography in violation of Article 134, Uniform Code of Military Justice, 10 U.S.C. § 934. The convening authority approved the appellant's sentence of confinement for two years and a bad-conduct discharge but, pursuant to the terms of a pretrial agreement, suspended all confinement in excess of 18 months for the period

of confinement served, plus six months. Two additional specifications relating to child pornography, to which pleas of not guilty were entered, were withdrawn and dismissed by the Government.

This case was submitted to us without specific assignment of error. After conducting our review of the record of trial and allied papers, we are convinced 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 occurred. Arts. 59(a) and 66(c), UCMJ.

We note, however, that the court-martial order, see RULE FOR COURTS-MARTIAL 1114, MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.), contains error. Because service members are entitled to records that correctly reflect the results of court-martial proceedings, see *United States v. Crumpley*, 49 M.J. 538, 539 (N.M.Ct.Crim.App. 1998), we shall order the necessary corrective action. The specific error in the court-martial order is as follows: it incorrectly lists pleas and findings of guilty to two additional specifications under the charge that were, consistent with the pretrial agreement, withdrawn and dismissed. See R.C.M. 1114(c)(1).

The pleas entered to Specification 2 and 3 under the charge were not guilty. At the conclusion of the providence inquiry, the Government moved to dismiss these offenses and the military judge granted that motion, with said dismissal ripening into a dismissal with prejudice upon the announcement of sentence. Record at 67.

The findings and the approved sentence are affirmed. The supplemental court-martial order shall properly reflect pleas of not guilty to Specifications 2 and 3, and the withdrawal and dismissal of Specifications 2 and 3.

For the Court

R.H. TROIDL
Clerk of Court