

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

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

UNITED STATES OF AMERICA

v.

**ROCCO B. SALVETA
PRIVATE (E-1), U.S. MARINE CORPS**

**NMCCA 201200362
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 2 May 2012.

Military Judge: LtCol Gregory Simmons, USMC.

Convening Authority: Commanding Officer, 3d Battalion, 5th
Marines, 1st Marine Division, Camp Pendleton, CA.

Staff Judge Advocate's Recommendation: Maj V.G. Laratta,
USMC.

For Appellant: CDR Howard Liberman, JAGC, USN.

For Appellee: Mr. Brian Keller, Esq.

20 November 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 two specifications of violating a lawful general order and one specification of fleeing apprehension, in violation of Articles 92 and 95, Uniform Code of Military Justice, 10 U.S.C. §§ 892 and 895. The appellant was sentenced to confinement for five months and a bad-conduct discharge. The convening

authority (CA) approved the sentence as adjudged. Pursuant to a pretrial agreement, the CA agreed to suspend all confinement in excess of 105 days "for the period of confinement served plus 12 months thereafter, at which time, unless sooner vacated, the suspended portion will be remitted without further action." Thus, the 12 month suspension period would commence running when the appellant was released from confinement.

This case was submitted without assignment of error. However, the CA erred by failing to enforce the terms of the pretrial agreement. In taking his action, the CA stated that he was suspending confinement in excess of 105 days, and that the suspension period "shall begin from the date of this action, and continue for the remainder of the accused's confinement plus 12 months thereafter." This is inconsistent with the terms of the pretrial agreement as detailed above.

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 CA 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 period of suspension runs for 12 months from the end of the period of confinement served. 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