

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

**Before  
J.A. MAKSYM, J.R. PERLAK, R.E. BEAL  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**BRENT E. STEVENS  
YEOMAN FIRST CLASS (E-6), U.S. NAVY**

**NMCCA 201000401  
SPECIAL COURT-MARTIAL**

**Sentence Adjudged:** 29 April 2011.

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

**Convening Authority:** Original-Commanding Officer,  
Beachmaster Unit ONE, Naval Amphibious Base, San Diego, CA;  
On Remand-Commander, Navy Region Southeast, San Diego, CA.

**Staff Judge Advocate's Recommendation:** CDR L.B. Sullivan,  
JAGC, USN.

**For Appellant:** CDR R.D. Evans, JR., JAGC, USN.

**For Appellee:** Capt David Roberts, USMC.

**31 January 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 violation of a lawful general regulation, larceny, and making fraudulent claims against the Government, in violation of Articles 92, 121, and 132, Uniform Code of Military Justice, 10 U.S.C. §§ 892, 921, and 932. The original convening authority (CA) approved the appellant's sentence to confinement for 225 days, reduction

to pay grade E-3, and a bad-conduct discharge. Pursuant to a pretrial agreement, the original CA suspended all confinement in excess of 120 days for the period of confinement served, plus twelve months.

We affirmed the findings on initial appeal but set aside the sentence and returned the record to the Judge Advocate General of the Navy (JAG) "for remand to a different convening authority with a rehearing on the sentence authorized and a new post trial review." *United States v. Stevens*, No. 201000401, unpublished op. (N.M.Ct.Crim.App. 24 Feb 2011). At the rehearing, the appellant was sentenced to confinement for four months and a bad-conduct discharge. The new CA approved the sentence as adjudged.

The appellant now assigns two errors: 1) that unlawful command influence (UCI) was exerted during the remand and resentencing hearing and 2) the promulgating order fails to adequately summarize the charges and specifications. Appellant's Brief of 12 Sep 2011 at 9 and 11. After careful consideration of the record and the parties' pleadings, we find no error materially prejudicial to the appellant's substantial rights remains and we affirm the sentence. Arts. 59(a) and 66(c), UCMJ.

### **Background**

The appellant was a yeoman first class (YN1/E-6) and assigned to Beachmaster Unit ONE (BMU-1). His duties included supervision and administration of the command's travel budget and related Defense Travel System (DTS) processes. The charges are based on his misuse of an official travel credit card, larceny of command travel funds, and presenting false claims against the Government, garnering over \$20,000.00 in unlawfully obtained payments, based on either personal expenses or fictitious travel vouchers.

At the initial presentencing hearing, the Government called Senior Chief Hospital Corpsman Senior Chief (HMCS) Newman, U.S. Navy, who was BMU-1's Leading Chief Petty Officer (LCPO) at the time the appellant's misconduct was discovered. HMCS Newman testified, without objection, to the adverse effects on the command resulting from the appellant's misconduct and to the original CA's loss of trust in the appellant. The Government also introduced Prosecution Exhibit 3, a letter from the original CA addressed to the military judge in which he expressed his personal views on the appellant's misconduct and

stated, "His misconduct and subsequent transfer from the command violated the sacred covenant of leadership in the Admin Office, eroded good order and discipline of the command, and caused unnecessary hardships on those hard-working Sailors remaining in the Admin Office." The original CA then attributed some specific adverse impacts on the command to the appellant's misconduct and subsequent transfer. PE 3 at 1.

In our initial review we found that the combination of the testimony in aggravation, the original CA's letter, and the reinforcing argument by trial counsel "served to make the sentencing portion of this case arguably more a matter of betrayal of the CA by the appellant, than a fair assessment of the impact of his actions on the mission of the command." Thus we held that the appellant produced "some evidence" of unlawful command influence which the Government failed to disprove beyond a reasonable doubt. *Stevens*, slip op. at 4. Thus, we returned the record to the JAG instructing that the case be remanded to a different CA with a rehearing on the sentence authorized and a new post-trial review. Instead, the JAG's designee forwarded our opinion to the original CA "for compliance with the order of the Navy-Marine Corps Court of Criminal Appeals." Appellate Exhibit XVIII. Next, the original CA forwarded both our opinion and the JAG's letter to his general court-martial convening authority (GCMCA), Commander, Navy Region Southwest (CNRSW), "requesting that Navy Region Southwest order a rehearing on sentencing and post-trial review" in the appellant's special court-martial.<sup>1</sup> AE XIX. Subsequently, CNRSW ordered a rehearing on sentence and a new post-trial review. AE XX.

At the sentencing rehearing, the military judge disclosed that he recalled reading our unpublished opinion and that he was "aware vaguely" that the basis for the remand had something to do about a letter from the CA. Rehearing Record at 8. He also disclosed that since being detailed to the case, he did not read the opinion again, that he was unaware of the original sentence, and that he did not know what sentencing protections were provided under the pretrial agreement. *Id.* The defense did not *voir dire* or challenge the military judge. *Id.* at 9.

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<sup>1</sup> We note that there was an apparent change of command at Beachmaster Unit ONE which occurred sometime between the initial action on the appellant's sentence and the time the case was forwarded from BMU-1 to CNRSW, because the name of the commanding officer who forwarded the case to CNRSW was different from the name of the commanding officer who referred the charges to trial by special court-martial, signed the pretrial agreement, signed PE 3, and took initial action on the sentence.

The military judge admitted PE 1, PE 4, and PE 5 into evidence without any defense objection.<sup>2</sup> *Id.* at 14, 16. PE 2 and 3 were not offered. The Government called HMCS Newman who again testified, without objection, to the adverse effects on the command resulting from the appellant's misconduct; omitted from his testimony was any reference to the original CA's loss of trust in the appellant. Rehearing Record at 17-28.

### **Unlawful Command Influence**

The appellant's claim of UCI is two-pronged. First, the appellant asserts the JAG erroneously forwarded our opinion to the original CA for compliance with our order, thus permitting him to improperly influence the new CA who ultimately ordered the rehearing. Second, he alleges the Government used the appellant's betrayal of his command's trust as an impermissible theme in its presentencing case. We disagree on both counts.

#### Remand to the Original CA

We agree that the JAG's designee did not strictly comply with our order to remand to a different CA. Nonetheless, we view the JAG's action to be substantially compliant with our order; the JAG did nothing more than task the original CA to forward the case to a different CA for action consistent with our order. In turn, the original CA forwarded the case to his GCMCA for disposition. The forwarding endorsement by the original CA with his recommendation that a rehearing be ordered does not amount to unlawful influence, because it is merely a recommendation from a subordinate to a senior authority. Once the GCMCA had the case for action, there were only two possible outcomes: 1) the GCMCA would not order the rehearing and would approve a sentence of no punishment, or 2) he would order a rehearing on the sentence. It is a common occurrence in the military that commanders will consider the advice of their staff judge advocates and involved subordinate commanders before exercising their own independent judgment when taking action on legal matters. Under the particular circumstances of this case, we do not believe the recommendation by the original CA to order a rehearing was improper or unlawful.

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<sup>2</sup> PE 1 is the stipulation of fact admitted at the original hearing on the merits; PE 4 is an updated personal data sheet; PE 5 consists of pages 19-59 of the original record of trial, which covered the providence inquiry.

## Sentencing Rehearing

The two components of evidence presented at the original sentencing hearing which we found to have raised the appearance of UCI, i.e., HMCS Newman's testimony on the original CA's loss of trust in the appellant and PE 3, were conspicuously absent from the rehearing. As such, the evidence admitted in aggravation and the Government counsel's sentencing argument were entirely appropriate and unremarkable. Accordingly, we decline to find any basis upon which to grant the appellant relief for this assigned error.

### **Inadequate Summary of Offenses in the Promulgating Order**

In our previous opinion we recommended that the new CA "should also provide an adequate summary of the charges and specifications on which the appellant was arraigned in the new court-martial order." *Stevens*, slip op. at 5, n.2. The new court-martial order does not provide an adequate summary of the charges. Special Court-Martial Order # 03-11 of 2 Aug 2011. Although the appellant fails to assert, and we do not find, any prejudice, the appellant is nonetheless entitled to have all his official records accurately reflect the results of his court-martial. *United States v. Crumpley*, 49 M.J. 538, 539 (N.M.Ct.Crim.App. 1998). Accordingly, we direct that the supplemental court-martial order provide a summary of the charges and specifications upon which the appellant was arraigned, his pleas to each charge and specification, and the findings or other disposition of each charge and specification. See RULE FOR COURTS-MARTIAL 1114(c), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.) and MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.), App. 17, at A17-1.

### **Conclusion**

The findings and sentence are affirmed.

For the Court

R.H. TROIDL  
Clerk of Court