

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

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

UNITED STATES OF AMERICA

v.

**MICHAEL R. BLACKBURN
CORPORAL (E-4), U.S. MARINE CORPS**

**NMCCA 201300011
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 27 September 2012.

Military Judge: LtCol Charles Hale, USMC.

Convening Authority: Commanding General, Marine Corps
Warfighting Laboratory, Marine Corps Combat Development
Command, Quantico, VA.

Staff Judge Advocate's Recommendation: LtCol J.L. Gruter,
USMC.

For Appellant: CAPT Diane Karr, JAGC, USN.

For Appellee: LT Philip S. Reutlinger, JAGC, USN.

25 April 2013

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 willfully disobeying a superior commissioned officer, one specification of violating a lawful general order, four specifications related to the use, possession, distribution, and introduction of controlled substances, and one specification of communicating a threat, in violation of

Articles 90, 92, 112a, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 890, 892, 912a, and 934. The military judge sentenced the appellant to confinement for 270 days, reduction to pay grade E-1, a reprimand, and a bad-conduct discharge. The convening authority (CA) explicitly approved the reduction to pay grade E-1, the reprimand, and the bad-conduct discharge. Although the CA failed to explicitly approve the 270 days confinement, he purported to suspend any confinement in excess of four months in accordance with the pretrial agreement.

The appellant's sole assigned error asserts that the CA's action is incomplete due to the failure to explicitly approve the confinement portion of the sentence prior to suspending confinement in excess of four months. The Government concurs. We agree with the parties that the CA's action is incomplete. RULE FOR COURTS-MARTIAL 1107(f)(4)(A), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2012 ed.). In the case of an incomplete action, we may instruct the CA who took the action to withdraw the original action and substitute a corrected action. R.C.M. 1107(g); see also *United States v. Mendoza*, 67 M.J. 53 (C.A.A.F. 2008).

We hereby return the record of trial to the Judge Advocate General of the Navy for remand to the original convening authority with direction that he withdraw his initial action and substitute a corrected action in accordance with R.C.M. 1107(g). "If the original convening authority has been replaced by a successor, there must be some evidence that the successor convening authority communicated with the original convening authority and that the corrected action reflects the original convening authority's intent. *United States v. Lower*, 10 M.J. 263, 265 (C.M.A. 1981). Alternatively, the successor convening authority may issue a new action after receiving a new SJAR/LOR that was served on the defense, providing the appellant a new opportunity to submit clemency matters. *United States v. Gosser*, 64 M.J. 93, 96-97 (C.A.A.F. 2006) (per curiam)." *United States v. Mendoza*, 67 M.J. 53, 54 (C.A.A.F. 2008). Following completion of this action, the record will be returned to the court for further review pursuant to Article 66(c), UCMJ.

For the Court

R.H. TROIDL
Clerk of Court