

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

**Before
F.D. MITCHELL, J.A. FISCHER, M.K. JAMISON
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**RYAN L. FULGHUM
PRIVATE (E-1), U.S. MARINE CORPS**

**NMCCA 201300290
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 5 April 2013.

Military Judge: LtCol Gregory L. Simmons, USMC.

Convening Authority: Commanding Officer, 5th Marine
Regiment, 1st Marine Division (Rein), Camp Pendleton, CA.

Staff Judge Advocate's Recommendation: Maj D.P. Harvey,
USMC.

For Appellant: CDR R.D. Evans, Jr., JAGC, USN.

For Appellee: Maj Paul M. Ervasti, USMC; LT Ann E. Dingle,
JAGC, USN.

17 December 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 violating a lawful general order, disorderly conduct, and a general disorder, in violation of Articles 92 and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 892 and 934. The appellant was sentenced to eight months confinement and a bad-conduct discharge. The convening authority (CA) approved the adjudged

sentence, but suspended confinement in excess of 38 days (time served), in accordance with the pretrial agreement.

On 5 April 2013, the appellant pled guilty to one specification each of wrongfully using spice, wrongfully possessing drug paraphernalia, disorderly conduct, and a general disorder. The record reflects that the trial defense counsel was provided an electronic copy of the record on 3 May 2013. Record at 81. On 13 May 2013, in accordance with RULE FOR COURTS-MARTIAL 1104(a)(2)(B), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2012 ed.), the trial counsel authenticated the record due to the retirement of the military judge. *Id.* at 82. On 28 May 2013, the trial counsel issued a certificate of correction which merely corrected the record to reflect that the actual date of trial was 5 April 2013, vice 5 March 2013. No additional corrections were made. The appellant now contends that: (1) the trial counsel executed the certificate of correction without providing the appellant or his counsel an opportunity to respond; and (2) that the trial counsel authenticated the record before trial defense counsel had an opportunity to review it.

Having reviewed the parties' pleadings and the record of trial, we are satisfied that the findings and sentence are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant occurred; we therefore affirm the findings and the approved sentence. Arts. 59(a) and 66(c), UCMJ.

Examination of Record by Trial Defense Counsel

Taking the appellant's assignments of error in chronological order, we find his second assignment of error to be without merit. R.C.M. 1103(i)(1)(B) permits the trial defense counsel to examine the record prior to authentication. Trial defense counsel received an electronic copy of the record on 3 May 2013 and authentication occurred approximately 10 days later (13 May 2013). The record, not including the certificate of correction, is only 81 pages long, thus giving trial defense counsel reasonable opportunity to submit corrections, if any, to the trial counsel.¹ We find substantial compliance with R.C.M. 1103(i)(1)(B) by the trial counsel, and in any event no prejudice to the appellant, who has not pointed out even on appeal any deficiencies in the record.

¹ We additionally note that the appellant's trial defense counsel received the staff judge advocate's recommendation on 8 July 2013 and, aside from a clemency petition submitted on 20 April 2013, declined to submit any additional matters or raise any procedural improprieties at that time.

Certificate of Correction

In his remaining assignment of error, the appellant avers, and the Government concedes, that the trial counsel, again acting on behalf of the military judge who had retired, issued a certificate of correction for the record of trial, which corrected and accurately reflected that the appellant was tried on 5 April 2013. The trial counsel neglected to serve it upon the appellant or his trial defense counsel prior to execution as required by R.C.M. 1104(d)(2). While the appellant has not demonstrated that he was prejudiced by this alleged error, he contends that this court should remand the case back to the CA for new post-trial processing to "reinforce several important principles." Appellant's Brief of 24 Sep 2013 at 9. Assuming this was error, we find no prejudice to the substantial rights of the appellant and decline to grant the requested relief.

For the Court

R.H. TROIDL
Clerk of Court