

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

**Before
M.D. MODZELEWSKI, R.Q. WARD, J.R. MCFARLANE
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**JOSUE I. GALLEGOS
CORPORAL (E-4), U.S. MARINE CORPS**

**NMCCA 201300268
GENERAL COURT-MARTIAL**

Sentence Adjudged: 27 March 2013.

Military Judge: LtCol Chris Thielemann, USMC.

Convening Authority: Commanding General, Marine Air Ground Task Force Training Command, MCAGCC, CA, Twentynine Palms CA.

Staff Judge Advocate's Recommendation: Col A.G. Peterson, USMC.

For Appellant: CAPT Diane Karr, JAGC, USN.

For Appellee: Maj David N. Roberts, USMC; Capt Matthew M. Harris, USMC.

21 November 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 general court-martial convicted the appellant, pursuant to his pleas, of making a false official statement and of rape of a child, in violation of Articles 107 and 120b, Uniform Code of Military Justice, 10 U.S.C. §§ 907 and 920b. The military judge sentenced the appellant to be confined for twenty-five years, to be reduced to

pay grade E-1, to forfeit all pay and allowances, and to be discharged with a dishonorable discharge. In accordance with the pretrial agreement (PTA), the convening authority (CA) disapproved the adjudged forfeitures, approved the remainder of the sentence, suspended all confinement in excess of fifteen years, and waived automatic forfeitures for six months.

The appellant asserts one error in the court-martial order (CMO). The CA erroneously included a paragraph stating that the appellant had breached the PTA; that the CA was no longer bound by the terms of that agreement; that the CA withdrew from that agreement; and, that the record of the vacation proceedings was to be attached to the record. General Court-Martial Order No. 3-2013 dtd 8 Jul 2013 at 2. The Government agrees that this paragraph was erroneously included in the CMO, and acknowledges that no breach occurred and that there were no vacation proceedings. Appellee's Answer of 21 Oct 2013 at 3.

The appellant offers no evidence of prejudice and we find none. He is, however, entitled to have the 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). The supplemental court-martial order will reflect that there was neither a breach of the pretrial agreement nor a vacation proceeding and that the protections of the PTA remain intact.

We conclude that the approved findings and sentence are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant was committed. Arts. 59(a) and 66(c), UCMJ. The findings and sentence as approved by the CA are affirmed.

For the Court

R.H. TROIDL
Clerk of Court