

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

**Before
F.D. MITCHELL, E.C. PRICE, P.D. LOCHNER
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**DONTE J. JOHNSON
LANCE CORPORAL (E-3), U.S. MARINE CORPS**

**NMCCA 201300239
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 12 February 2013.

Military Judge: LtCol Leon J. Francis, USMC.

Convening Authority: Commanding Officer, Marine Special Operations Support Battalion, Marine Special Operations Support Group, U.S. Marine Corps Forces Special Operations Command, Camp Pendleton, CA.

Staff Judge Advocate's Recommendation: LtCol C.B. Walters, USMC.

For Appellant: Maj Emmett S. Collazo, USMCR.

For Appellee: Mr. Brian K. Keller, Esq.

26 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 special court-martial convicted the appellant, pursuant to his pleas, of three specifications of wrongful use of a controlled substance in violation of Article 112a, Uniform Code of Military Justice, 10 U.S.C. § 912a. The appellant was sentenced to confinement for six months, reduction to pay grade E-1 and a bad-conduct

discharge. The convening authority (CA) approved the sentence as adjudged, but suspended execution of confinement in excess of 30 days.

Although not submitted as error, we note that while the CA's action accurately reflects that execution of confinement in excess of 30 days was suspended pursuant to the pretrial agreement, it also indicates that the period of suspension began from the date of the CA's action. This is an error as the pretrial agreement, specifies that ". . . all confinement in excess of 30 days will be suspended for the period of time served plus six months[.]"¹ Appellate Exhibit III at ¶ 2. Because service members are entitled to records that correctly reflect the results of court-martial proceedings, see *United States v. Crumpley*, 49 M.J. 538, 539 (N.M.Ct.Crim.App. 1998), we shall order the necessary corrective action.

After conducting our thorough review of the record of trial and allied papers, we are convinced that the findings and sentence are correct in law and fact and that no other error materially prejudicial to the substantial rights of the appellant occurred. Arts. 59(a) and 66(c), UCMJ.

The findings and the approved sentence are affirmed. The supplemental court-martial order will reflect that, in accordance with the pretrial agreement, the appellant's period of suspension ran from the date the appellant was released from post-trial confinement until six months thereafter and that the period of suspension has been remitted.

For the Court

R.H. TROIDL
Clerk of Court

¹ The appellant was tried 12 February 2013 and after serving thirty days confinement (even assuming no good time credit) he would have been released in March 2013. Since the suspension period was from time served plus six months, this suspension period has lapsed.