

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

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

UNITED STATES OF AMERICA

v.

**MALLORY A. LESTERUPSHUR
BOATSWAIN'S MATE SEAMAN (E-3), U.S. NAVY**

**NMCCA 201200380
GENERAL COURT-MARTIAL**

Sentence Adjudged: 4 May 2012.

Military Judge: CAPT Kevin O'Neil, JAGC, USN.

Convening Authority: Commander, Navy Region Southwest, San Diego, CA.

Staff Judge Advocate's Recommendation: CDR J.M. Nilsen, JAGC, USN.

For Appellant: CAPT Randy Bryan, JAGC, USN.

For Appellee: Maj Crista Kraics, USMC.

12 February 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 her pleas, of making a false official statement, use, possession and distribution of a controlled substance, and larceny, in violation of Articles 107, 112a, and 121, Uniform Code of Military Justice, 10 U.S.C. §§ 907, 912a, and 921. The military judge sentenced the appellant to confinement for 364 days, a fine of \$1,500.00, reduction to pay grade E-1, and a bad-conduct discharge. The convening

authority approved the adjudged sentence, but suspended the fine and confinement in excess of nine months, and waived automatic forfeitures.

The appellant asserts that her pleas were improvident based upon a material misunderstanding of a term of her pretrial agreement (PTA). After careful consideration of this sole assignment of error, we conclude that the matter raised by the appellant is unfounded in fact¹ and does not merit either relief or further analysis.² *United States v. Matias*, 25 M.J. 356, 363 (C.M.A. 1987).

Upon our review of the record of trial, we conclude that the findings and the sentence are correct in law and fact, and that no error materially prejudicial to the substantial rights of the appellant exists. Arts. 59(a) and 66(c), UCMJ. We affirm the findings and sentence as approved by the convening authority.

For the Court

R.H. TROIDL
Clerk of Court

¹ Contrary to the appellant's assertion, the pretrial agreement required the convening authority to suspend only adjudged forfeitures provided the appellant established a dependent's allotment. As the appellant was beyond her expiration of active obligated service (EAOS), the agreement provided no protection against automatic forfeitures. After announcing the sentence, the military judge specifically explained the effect of the pretrial agreement on the adjudged sentence, "Automatic forfeitures will apply to the period in which you are confined. However, as I previously explained to you earlier this afternoon, you are beyond your EAOS. During any confinement you must serve you are not entitled to pay during that period of confinement." Record at 122. The appellant expressed understanding of the consequences of her EAOS and her receipt of pay. *Id.* at 53.

² Since the record reflects that the appellant was beyond her EAOS at the time of her court-martial and that there was no PTA term addressing automatic forfeitures, we are perplexed by the defense counsel's clemency request which requested, inter alia, waiver of automatic forfeitures. We are similarly perplexed by the staff judge advocate's addendum indicating that a term of the PTA was to defer and waive automatic forfeitures, and the CA's action in attempting to waive forfeitures. Furthermore, contrary to both parties' assertion, the record is void of any agreement that the convening authority would protect the appellant from automatic forfeitures.