

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

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

**UNITED STATES OF AMERICA**

**v.**

**WILLIAM R. MUNKUS  
LANCE CORPORAL (E-3), U.S. MARINE CORPS**

**NMCCA 201200323  
SPECIAL COURT-MARTIAL**

**Sentence Adjudged:** 25 April 2012.

**Military Judge:** Col Deborah McConnell, USMC.

**Convening Authority:** Commanding Officer, Combat Logistics Battalion 8, Combat Logistics Regiment 2, 2d Marine Logistics Group, Camp Lejeune, NC.

**Staff Judge Advocate's Recommendation:** LtCol R.G. Bracknell, USMC.

**For Appellant:** Capt David Peters, USMC; LT Robert Burk, JAGC, USN.

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

**31 January 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 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 three months, reduction to pay grade E-1, forfeitures of \$994.00

pay per month for three months, and a bad-conduct discharge.<sup>1</sup> In accordance with the pretrial agreement, the convening authority (CA) approved the sentence as adjudged, but suspended all confinement in excess of 90 days.

This case was submitted without assignment of error. We note that the military judge did not obtain from the appellant an election of forum prior to proceeding by military judge alone,<sup>2</sup> nor did she state that the court-martial was assembled. However, having carefully examined the record of trial, we find substantial compliance with Article 16, UCMJ. *United States v. Goodwin*, 60 M.J. 849, 850 (N.M.Ct.Crim.App. 2005) (citing *United States v. Turner*, 47 M.J. 348, 350 (C.A.A.F. 1997) and *United States v. Mayfield*, 45 M.J. 176, 178 (C.A.A.F. 1996)). See also *United States v. Hansen*, 59 M.J. 410, 412 (C.A.A.F. 2004); *United States v. Townes*, 52 M.J. 275, 276-77 (C.A.A.F. 2000). Furthermore, we are convinced that failure to announce assembly was simply an oversight. We consider the court to have been assembled. Because the military judge substantially complied with the requirements of Article 16 and the appellant was not harmed by the omitted statements regarding forum approval and court assembly, we find no prejudice to the appellant's substantial rights.

We are convinced 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 was committed. Arts. 59(a) and 66(c), UCMJ. The findings and the sentence are affirmed.

For the Court

R.H. TROIDL  
Clerk of Court

---

<sup>1</sup> The military judge, upon an initial announcement of sentence, misstated the forfeitures as \$1,245.00 pay per month for three months. In a post-trial Article 39(a) session of court, she corrected the punishment to reflect the appellant's forfeitures at his reduced pay grade.

<sup>2</sup> The appellant was advised of his forum selection rights by the military judge at his arraignment.