

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

**Before
M.D. MODZELEWSKI, R.G. KELLY, T.R. ZIMMERMANN
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**PETER J. WIREBAUGH
CHIEF OPERATIONS SPECIALIST (E-7), U.S. NAVY**

**NMCCA 201300007
GENERAL COURT-MARTIAL**

Sentence Adjudged: 1 October 2012.

Military Judge: Col James K. Carberry, USMC.

Convening Authority: Commander, Navy Region Hawaii, Pearl Harbor, HI.

Staff Judge Advocate's Recommendation: LCDR K.A. Elkins, JAGC, USN.

For Appellant: LtCol Richard D. Belliss, USMCR.

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

2 April 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 attempting to view child pornography and possessing images of child pornography, in violation of Articles 80 and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 880 and 934. The military judge sentenced the appellant to reduction to pay grade E-1, 15 months confinement, and a dishonorable discharge. The convening authority approved the sentence as adjudged, but in accordance

with the pretrial agreement (PTA), suspended confinement in excess of 300 days and additionally waived automatic forfeiture of pay and allowances for 6 months from the date of his action.

Although not raised on appeal, we note an error in the record that requires remedy. Under Charge I, the appellant pleaded guilty to two specifications of attempting to view child pornography: both specifications alleged the same time period and location, but Specification 1 alleged that the conduct was prejudicial to good order and discipline, and Specification 2 alleged that the conduct was service discrediting. Similarly, under Charge II, the appellant pleaded guilty to two specifications of possession of child pornography, one alleging a violation of Clause 1 of Article 134, and the other alleging a violation of Clause 2. Prior to his providency inquiry, the military judge properly merged the two specifications under Charge I into one specification alleging conduct that was both prejudicial to good order and discipline and service discrediting, and did the same for the two specifications under Charge II.

The court-martial order does not accurately capture this merger, instead reflecting that the appellant was convicted of four specifications.¹ The appellant does not assert, and we do not find, that this error materially prejudiced a substantial right. Nevertheless, the appellant is entitled to have his official records accurately reflect the results of his court-martial. *United States v. Crumpley*, 49 M.J. 538 (N.M.Ct.Crim.App. 1998). We will order the necessary corrective action.

Finding no error materially prejudicial to the substantial rights of the appellant, we affirm the findings and the approved sentence. Arts. 59(a) and 66(c), UCMJ. We direct that the supplemental court-martial order reflect the merger of Specifications 1 and 2 of Charge I, and the merger of

¹ The staff judge advocate's recommendation and the defense clemency request contain the same error: they mirror the language of the PTA and the pleas of the appellant, and do not reflect the merger of the specifications.

Specifications 1 and 2 of Charge II, and the findings of guilty as to those two merged offenses.

For the Court

R.H. TROIDL
Clerk of Court