

**IN THE U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS
WASHINGTON NAVY YARD
WASHINGTON, D.C.**

BEFORE

C.L. CARVER

D.A. WAGNER

R.W. REDCLIFF

UNITED STATES

v.

**Cory R. BUCKNER
Lance Corporal (E-3), U.S. Marine Corps**

NMCCA 200301662

Decided 15 December 2004

Sentence adjudged 16 December 2002. Military Judge: P.H. McConnell. Review pursuant to Article 66(c), UCMJ, of convened by Commanding Officer, Marine Aerial Refueler Transport Squadron 252, Marine Aircraft Group 14, 2d Marine Aircraft Wing, Marine Forces Atlantic, Marine Corps Air Station, Cherry Point, NC.

LCDR E.J. MCDONALD, JAGC, USN, Appellate Defense Counsel
LCDR JOHN WOOLDRIDGE, JAGC, USNR, Appellate Defense Counsel
Capt WILBUR LEE, USMC, Appellate Government Counsel

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.

REDCLIFF, Judge:

A military judge, sitting as a special court-martial, convicted the appellant, pursuant to his pleas, of aggravated assault, in violation of Article 128, Uniform Code of Military Justice, 10 U.S.C. § 928. The appellant was sentenced to 60 days confinement, reduction to pay grade E-1, forfeiture of \$300.00 pay per month for 4 months, and a bad-conduct discharge.

The appellant asserts that he suffered illegal pretrial punishment, that the charges were unreasonably multiplied, and that his sentence is inappropriately severe.

We have carefully considered the record of trial, the assignments of error, and the Government's response. We conclude that the findings and sentence are correct in law and fact, and no error materially prejudicial to the substantial rights of the appellant occurred. Arts. 59(a) and 66(c), UCMJ.

Illegal Pretrial Punishment

The appellant contends in his first assignment of error that the military judge erred in denying him credit for illegal pretrial punishment in violation of Article 13, UCMJ, and credit for pretrial restriction tantamount to confinement pursuant to *United States v. Mason*, 19 M.J. 274 (C.M.A. 1985).

Whether a pretrial detainee suffered unlawful punishment is a mixed question of law and fact that qualifies for independent review. *See United States v. Pryor*, 57 M.J. 821, 825 (N.M.Ct.Crim.App. 2003), *rev. denied*, 59 M.J. 32 (C.A.A.F. 2003). The burden of proof is on the appellant to show a violation of Article 13, UCMJ. *United States v. Mosby*, 56 M.J. 309, 310 (C.A.A.F. 2002). Article 13 prohibits two things: (1) the intentional imposition of punishment on an accused before his or her guilt is established at trial, i.e., illegal pretrial punishment, and (2) arrest or pretrial confinement conditions that are more rigorous than necessary to ensure the accused's presence at trial, i.e., illegal pretrial confinement. *See United States v. Inong*, 58 M.J. 460, 463 (C.A.A.F. 2003).

The appellant's contentions were well-litigated during a pretrial motion hearing pursuant to Article 39a, UCMJ. We hold that the military judge's extensive findings of fact on this issue are supported by the record, and we adopt those findings here. Record at 68; Appellate Exhibit III. In essence, the appellant complains that he was denied visitation on one occasion, that he was prohibited from attending the Marine Corps Birthday Ball, and that he was precluded from enjoying a Thanksgiving meal at the home of another noncommissioned officer. The record demonstrates that the appellant was denied visitation on one occasion because his commanding officer was unavailable to grant permission. Additionally, the appellant was prohibited from attending the Birthday Ball and the Thanksgiving dinner because of concerns that he would abuse alcohol, a factor related to his alleged misconduct. In our view, the record is devoid of credible evidence showing a punitive intent behind any of the complained of facets of the appellant's pretrial restriction.

The appellant also contends, without further elaboration, that the conditions of his pretrial restriction constituted de facto confinement. We disagree. None of the restriction conditions, separately or collectively, lead us to conclude that the appellant was subject to confinement. *See United States v. King*, 58 M.J. 110 (C.A.A.F. 2003). After reviewing the entire record, we find no abuse of discretion in the convening authority's determination that the complained of conditions were reasonably necessary to prevent further misconduct by the appellant. We further find that the military judge properly denied the appellant's motion for appropriate credit under

Article 13, UCMJ, and *Mason*, and we decline to grant the relief requested.

Conclusion

We have also considered the appellant's two remaining assignments of error and find no merit in them. We have specifically considered the appellant's contention that his sentence was inappropriately severe, and conclude that the adjudged sentence was appropriate for this offender and his offense. *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988); *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982).

Accordingly, we affirm the findings and sentence, as approved by the convening authority.

Senior Judge CARVER and Judge WAGNER concur.

For the Court

R.H. TROIDL
Clerk of Court