

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

**Before
D.E. O'TOOLE, L.T. BOOKER, J.E. STOLASZ
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**CHRISTOPHER D. HAYS
LANCE CORPORAL (E-3), U.S. MARINE CORPS**

**NMCCA 200900271
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 18 February 2009.

Military Judge: CDR Colleen Glaser-Allen, JAGC, USN.

Convening Authority: Commanding Officer, Headquarters and Service Battalion, Marine Corps Base, Quantico, Virginia.

Staff Judge Advocate's Recommendation: LtCol S.C. Newman, USMC.

For Appellant: CAPT Patricia Leonard, JAGC, USN.

For Appellee: Brian Keller, Esq.

10 September 2009

OPINION OF THE COURT

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.

PER CURIAM:

A military judge sitting as a special court-martial convicted the appellant, pursuant to his pleas, of unauthorized absences, failure to obey a lawful general order, two instances of wrongfully damaging non-military property, and wrongfully using marijuana, in violation of Articles 86, 92, 109, and 112a, Uniform Code of Military Justice, 10 U.S.C. §§ 886, 892, 909, and 912a. The appellant was sentenced to confinement for ten months, reduction to pay grade E-1, and a bad-conduct discharge.

The convening authority (CA) approved the sentence as adjudged. The appellant submitted this case without specific assignment of error.

Contrary to his plea and the military judge's finding, the appellant's two-month unauthorized absence (alleged in Specification 2 of Charge I) did not begin on 9 September 2008 as alleged; rather, it began the following day. Record at 21-26. A definitive inception date "is indispensable to a successful prosecution for unauthorized absence," *United States v. Harris*, 45 C.M.R. 364, 367 (1972), and here that inception date is shown clearly to be 10 September 2008. We will take the necessary corrective action in our decretal paragraph.

The minor change in the inception date of the unauthorized absence does not in any way affect the "sentencing landscape". The appellant's absence for more than 30 days, whether it is for 61 days or 62 days, triggers the same theoretical maximum punishment of 1 year, and we have not disturbed any of the other findings of guilty. We are confident that the trial forum would have imposed, and the CA would have approved, a sentence of the same magnitude as that originally imposed and approved but for the minor change in the inception date. See, e.g., *United States v. Buber*, 62 M.J. 476 (C.A.A.F. 2006).

The finding of guilty to Specification 2 is modified to read "except for the words and figures 9 September 2008, substituting therefor the words and figures 10 September 2008, of the excepted words and figures Not Guilty, of the substituted words and figures Guilty, and of the Specification as excepted and substituted, Guilty". The remaining findings and the approved sentence are affirmed.

Chief Judge O'TOOLE participated in the decision of this case prior to detaching from the court.

For the Court

R.H. TROIDL
Clerk of Court