

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

**Before
E.E. GEISER, L.T. BOOKER, J.K. CARBERRY
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**EDWARD M. JEWETT
UTILITIESMAN FIRST CLASS (E-6), U.S. NAVY**

**NMCCA 200900167
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 25 September 2008.

Military Judge: CAPT James Redford, JAGC, USN.

Convening Authority: Commanding Officer, U.S. Naval Air Station, Sigonella, Sicily, Italy.

Staff Judge Advocate's Recommendation: LCDR Jason S. Grover, JAGC, USN.

For Appellant: LCDR Luis Leme, JAGC, USN.

For Appellee: Maj Elizabeth A. Harvey, USMC; Mr. Brian K. Keller, Esq.

24 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AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.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, consistent with his pleas, of attempting to communicate indecent language to a child under the age of 16, attempting to persuade and entice a minor to engage in aggravated sexual assault, and possessing child pornography, in violation of Articles 80 and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 880 and 934. The approved sentence was

confinement for nine months, reduction to pay grade E-1, forfeiture of two-thirds pay per month for nine months, and a bad-conduct discharge.

The appellant raises two assignments of error. First, he asserts that the military judge erred when he announced a punishment, *inter alia*, of forfeiture of "two-thirds pay per month for nine months" as opposed to announcing forfeitures as an exact dollar amount. Second, the appellant avers that the announcement of findings was ambiguous and incorrect.

We have examined the record of trial, the appellant's assignments of error, and the Government's response. We agree with the appellant's first assignment of error and will take appropriate action in our decretal paragraph. Following our action, we conclude that the findings and sentence are now correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant remains. Arts. 59(a) and 66(c), UCMJ.

Sentencing Error

When a partial forfeiture is adjudged, the sentence must state the exact dollar amount of the forfeiture. RULE FOR COURTS-MARTIAL 1003(b)(2), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.). However, failure of the military judge to account for forfeitures in a dollar amount is a clerical error "with no prejudicial impact on the accused," and it is easily remedied. *United States v. Gilgallon*, 2 C.M.R. 170, 172 (C.M.A. 1952); see *United States v. Rosado*, ___ M.J. ___, 2009 CAAF LEXIS 1001 (C.A.A.F. Sep. 2, 2009); *United States v. Dean*, 1991 CMR LEXIS 1543 (N.M.C.M.R. 13 Dec 1991). We will do so.

Ambiguity in Announced Findings

Announcement of the findings in open court is a substantial statutory right of an accused; however, not every error in the announcement of the findings materially prejudices the accused. *United States v. Perkins*, 56 M.J. 825, 827 (Army Ct.Crim.App. 2001). The announcement of a verdict is sufficient if it decides the questions at issue in such a way as to "enable the court intelligently to base judgment thereon" and forms "the basis for a bar to subsequent prosecution for the same offense.'" *Id.* at 827 (quoting *United States v. Dilday*, 47 C.M.R. 172, 173 (A.C.M.R. 1973)). As long as the record as a whole conveys the intention of the military judge, "the finding can be affirmed on appeal and the appellant is afforded full

protection against double jeopardy." *United States v. Dunn*, 2006 CCA LEXIS 143, at 5, unpublished op. (N.M.Ct.Crim.App. 30 Jun 2006), *aff'd*, 64 M.J. 357 (C.A.A.F. 2006).

In the instant case, the appellant pled guilty to two specifications under Article 80 and one specification under Article 134. The military judge found the appellant guilty consistent with his pleas under Article 80 but misspoke moments later when he mistakenly referenced Article 81. The record reflects that the appellant pled guilty to two attempt specifications under Article 80, responded appropriately during the military judge's providence inquiry into the attempts, and was appropriately found guilty of two attempt specifications. The military judge's isolated mistake in reference did not make the findings fatally ambiguous or unintelligible. Similarly, the military judge's failure to specifically identify the last specification as a violation of Article 134 still adequately reflected the intention of the military judge and affords the appellant full protection against double jeopardy.

We, therefore, find that the military judge's findings were not ambiguous when placed in the context of the entire record, especially in consideration of the pretrial agreement, arraignment, and guilty plea inquiry. It is apparent that the military judge, counsel, the appellant, and this court all understand which offenses the appellant was pleading guilty to and of which offenses the military judge found him guilty.

Conclusion

The findings are affirmed. A sentence of confinement for nine months, forfeiture of \$898.00 pay per month for a period of nine months, reduction to pay grade E-1, and a bad-conduct discharge is affirmed.

For the Court

R.H. TROIDL
Clerk of Court