

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

**Before
R.E. VINCENT, E.C. PRICE, J.R. PERLAK
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**SHANE S. SIMON
CHIEF BUILDER (E-7), U.S. NAVY**

**NMCCA 200900292
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 01 February 2009.

Military Judge: CAPT Bruce MacKenzie, JAGC, USN.

Convening Authority: Commanding Officer, Naval Facilities
Engineering Command Europe and Southwest Asia, Naples,
Italy.

Staff Judge Advocate's Recommendation: LT J.W. Connors,
JAGC, USN.

For Appellant: CAPT Salvador Dominguez, JAGC, USN.

For Appellee: LCDR Clayton Trivett, JAGC, USN; Maj
Elizabeth Harvey, USMC.

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AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.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, pursuant to his pleas, of wrongfully distributing methamphetamine on divers occasions, in violation of Article 112a, Uniform Code of Military Justice, 10 U.S.C. § 912a. The appellant was sentenced to confinement for twelve months, reduction to pay grade E-1, a fine of \$5,000.00, and a

bad-conduct discharge. The convening authority (CA) approved the sentence as adjudged, but, in accordance with the pretrial agreement, suspended all confinement "in excess of 10 months (300) days" for a period of confinement served plus twelve months.

The appellant's sole assignment of error asserts that the special court-martial order (SCMO) incorrectly reflects the court-martial sentence by failing to note that a \$5,000.00 fine was part of the adjudged sentence. We agree with the appellant's assertion, and the Government's concession, that the SCMO does not accurately reflect that the appellant's sentence included a \$5,000.00 fine.

While this error in the SCMO is obvious, in the absence of any prejudice to the appellant, it does not constitute "plain error materially prejudicing [the] appellant's substantial rights, and deny relief." *United States v. Crumpley*, 49 M.J. 538, 539 (N.M.Ct.Crim.App. 1998). However, the appellant is entitled to have "his official records reflect the results of" his court-martial. *Id.* We will take appropriate action in our decretal paragraph.

As we noted above, in accordance with the pretrial agreement, the CA suspended all confinement in excess of 10 months (300) days for a period of six months. The appellant was sentenced on 1 February 2009. Ten months from that date would equal 302 days. To clarify this ambiguity, we will also take appropriate action in our decretal paragraph.

Following our corrective action, we conclude that the approved findings and 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.

Accordingly, the findings and sentence, as approved by the convening authority, are affirmed. We direct that the supplemental SCMO: (1) accurately reflect the appellant's sentence, including the adjudged \$5,000.00 fine and (2) reflect that the execution of the portion of the appellant's sentence adjudging confinement in excess of 300 days is suspended for the period of confinement served plus twelve months thereafter, at which time, unless the suspension is sooner vacated, the suspended portion of the sentence will be remitted without further action.

For the Court

R.H. TROIDL
Clerk of Court