

**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.

**BRANDON T. AKINS
PRIVATE FIRST CLASS (E-2), U.S. MARINE CORPS**

**NMCCA 200900522
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 15 July 2009.

Military Judge: CDR T.F. Fichter, JAGC, USN.

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

Staff Judge Advocate's Recommendation: Col Stephen C. Newman, USMC.

For Appellant: CAPT Paul Jones, JAGC, USN.

For Appellee: LCDR Clayton G. Trivett, JAGC, USN; LT Brian C. Burgtorf, JAGC, USN.

28 January 2010

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AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.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 two specifications of unauthorized absence in violation of Article 86, Uniform Code of Military Justice 10 U.S.C. § 886. The military judge sentenced the appellant to confinement for 270 days, reduction to pay grade E-1, and a bad-conduct discharge. The convening authority (CA) suspended all confinement in excess of 120 days and ordered the sentence executed "[i]n accordance with the UCMJ, Rules of Court-Martial [sic], applicable regulations, and the pretrial agreement, and this action"

The appellant now asserts the following errors: that the Report of Results of Trial was not included in the staff judge advocate's recommendation (SJAR) to the CA; that the SJA failed to serve the addendum to the SJAR on trial defense counsel; that the CA failed to sign the CA's action; and, that the CA erroneously executed the bad-conduct discharge.

We find that these assignments of error are without merit and, after carefully considering the parties' briefs and examining the record of trial, we are convinced that the findings and sentence are correct in law and fact and no error materially prejudicial to the substantial rights of the appellant occurred. Art. 59(a) and 66(c), UCMJ.

SJAR Did Not Include Report of Results of Trial

Assuming without deciding that the SJAR was defective because it did not include the Report of Results of Trial as an enclosure, we find no prejudice to the appellant as the Report of Results of Trial dated 15 July 2009 was addressed to the CA; the results of the appellant's court-martial were incorporated into the body of the SJAR; the report is attached to the record of trial; and, in his action, the CA specifically stated that he considered the Report of Results of Trial and record of trial prior to taking his action.

Addendum to SJAR was not Served on Defense Counsel

"When new matter is introduced after the accused and counsel for the accused have examined the recommendation . . . the accused and counsel for the accused must be served with the new matter and given 10 days from service of the addendum in which to submit comments." RULE FOR COURTS-MARTIAL 1106(f)(7), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.). The appellant argues that the SJAR addendum is new matter. "'New matter' includes discussion of the effect of new decisions on issues in the case, matter from outside the record of trial, and issues not previously discussed. [It] does not ordinarily include any discussion by the [SJA] of the correctness of the initial defense comments on the recommendation." *Id.*, Discussion. The addendum simply forwarded the appellant's clemency petition to the CA, stated the clemency requested, and recommended that clemency be denied. It contained nothing new and the information contained therein was not erroneous, inadequate, or misleading and we find that it did not contain new matter. Even if new matter were introduced, the appellant fails to demonstrate prejudice by stating what he would have submitted to "deny, counter, or explain" it. See *United States v. Chatman*, 46 M.J. 321, 323 (C.A.A.F. 1997). We find no prejudice and conclude that this assignment of error is without merit.

CA Failed to Sign Action

The appellant's third assignment of error is without merit as the CA did sign the action. The fact that the officer who referred the charges did not sign the action is of no moment as the officer who did was a successor in command. See R.C.M. 103(6).

CA Purports to Execute BCD

As for the CA's action purporting to execute the bad-conduct discharge, we find that error harmless, as it is a legal nullity. See *United States v. Houston*, 48 M.J. 861, 863 (N.M.Ct.Crim.App. 1998); *United States v. Caver*, 41 M.J. 556, 565 (N.M.Ct.Crim.App. 1994). Thus, no remedial action is required.

We affirm the findings and the approved sentence.

For the Court

R.H. TROIDL
Clerk of Court