

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

**Before
C.L. REISMEIER, R.E. BEAL, D.O. VOLLENWEIDER
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**DUANE A. CARTER II
SERGEANT (E-5), U.S. MARINE CORPS**

**NMCCA 201000112
GENERAL COURT-MARTIAL**

Sentence Adjudged: 26 October 2009.

Military Judge: CAPT Keith Allred, JAGC, USN.

Convening Authority: Commanding General, II Marine Expeditionary Force, Camp Lejeune, NC.

Staff Judge Advocate's Recommendation: Col B.T. Palmer, USMC.

For Appellant: Maj Sean B. Payton, USMC.

For Appellee: Mr. Brian Keller, Esq.

30 June 2010

OPINION OF THE COURT

**IN ACCORDANCE WITH RULE 18.2, NMCCA RULES OF PRACTICE AND PROCEDURE, THIS
OPINION DOES NOT SERVE AS PRECEDENT.**

PER CURIAM:

A military judge sitting as a general court-martial convicted the appellant, pursuant to his pleas, of two specifications of violating a lawful general order, one specification of dereliction of duty, one specification of assault, six specifications of assault consummated by a battery, and five specifications of aggravated assault with a dangerous weapon in violation of Articles 92 and 128, Uniform Code of Military Justice, 10 U.S.C. §§ 892 and 928. Following conviction, the appellant was sentenced to confinement for 28 months and a dishonorable discharge. Pursuant to the terms of

his pretrial agreement, the convening authority approved only a bad-conduct discharge and the adjudged confinement.

After carefully considering the record of trial, submitted without assignment of error, we conclude that the 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. We note, however, an error in the court-martial order, which incorrectly reflects that the appellant pled guilty to and was found guilty of Specification 1 of Charge II in its original form, which described an aggravated assault. The appellant did attempt to plead guilty to that specification as written. Record at 36, 83-91. Ultimately, the military judge found that plea improvident, and the Government consented to allow him to plead guilty to the specification excepting the words, "with a force likely to produce death or bodily harm, to wit: holding him," and he was found guilty with the exception of those words. *Id.* at 90-91, 118. We test this error under a harmless error standard. *United States v. Crumpley*, 49 M.J. 538, 539 (N.M.Ct.Crim.App. 1998). We find that the error did not affect the appellant's substantial rights, since no prejudice was alleged or is apparent, but that the appellant is entitled to a corrected court-martial order. *Id.*

Accordingly, the findings and sentence as approved by the convening authority are affirmed. We order that the supplemental court-martial order accurately reflect the charges and specifications to which the appellant pleaded guilty, and for which guilty findings were entered.

For the Court

R.H. TROIDL
Clerk of Court