

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

**Before
F.D. MITCHELL, E.C. PRICE, J.R. PERLAK
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**DANIEL R. TODD
PRIVATE (E-1), U.S. MARINE CORPS**

**NMCCA 200900590
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 18 August 2009.

Military Judge: Maj Robert Palmer, USMC.

Convening Authority: Commanding Officer, Headquarters and Service Battalion, Marine Corps Recruit Depot, Parris Island, SC.

Staff Judge Advocate's Recommendation: Maj C.M. Brannen, USMC; **Addendum:** Col J.J. Lagasca, USMC.

For Appellant: Maj Justin Constantine, USMCR.

For Appellee: Mr. Brian Keller, Esq.

12 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AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.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 conspiracy, violation of a lawful general order or regulation, wrongful use, possession and introduction onto a military installation of marijuana, and solicitation, in violation of Articles 81, 92, 112a, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 881, 892, 912a, and 934. The military judge sentenced the appellant to confinement for 12 months, forfeiture of \$900.00 pay

per month for a period of 12 months, and a bad-conduct discharge. The convening authority (CA) approved the sentence as adjudged.

After careful consideration of the record, submitted without assignment of error, we conclude that the CA's action does not comply with the terms of the pretrial agreement. Specifically, the approved sentence includes confinement for 12 months; however, the pretrial agreement requires the CA to disapprove "any confinement in excess of 120 days." Convening Authority's Action and Order of 13 Oct 2009 at 3; Appellate Exhibit III at ¶ 3. The CA's failure to comply with this material provision of the agreement is susceptible to remedy in the form of specific performance. See *United States v. Smead*, 68 M.J. 44, 59 (C.A.A.F. 2009). We will take corrective action in our decretal paragraph and, following that action, conclude that the findings and the sentence are 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.

Accordingly, we affirm the findings and a sentence including confinement for 120 days, forfeiture of \$900.00 pay per month for a period of 12 months, and a bad-conduct discharge.

For the Court

R.H. TROIDL
Clerk of Court