

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

**Before
J.A. MAKSYM, J.R. PERLAK, B.L. PAYTON-O'BRIEN
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**MARC A. SCHWARZ
ELECTRICIAN'S MATE SECOND CLASS (E-5), U.S. NAVY**

**NMCCA 201100442
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 24 May 2011.

Military Judge: CDR William Martin, JAGC, USN.

Convening Authority: Commanding Officer, Naval Submarine Support Center New London, Groton, Ct.

For Appellant: CAPT Salvador Dominguez, JAGC, USN.

For Appellee: LCDR Gregory R. Dimler, JAGC, USN;
LT Benjamin J. Voce-Gardner, JAGC, USN.

28 December 2011

OPINION OF THE COURT

THIS OPINION DOES NOT SERVE AS BINDING PRECEDENT, BUT MAY BE CITED AS PERSUASIVE AUTHORITY UNDER NMCCA RULE OF PRACTICE AND PROCEDURE 18.2.

PER CURIAM:

A military judge sitting as a special court-martial convicted the appellant, pursuant to his pleas, of one specification of knowingly receiving and one specification of knowingly possessing child pornography in violation of Article 134, Uniform Code of Military Justice, 10 U.S.C. § 934. The convening authority (CA) approved the appellant's sentence of confinement for one year, reduction to E-1, forfeitures of \$975.00 pay per month for twelve months, and a bad-conduct

discharge, but suspended confinement in excess of three months pursuant to a pretrial agreement.

The case is before us with a single assignment of error, alerting us to an error in the court-martial order (CMO)/convening authority's action and a prayer for correction. The Government concedes the error and remedy.

Various exceptions and substitutions were made by the court in order to comport the specifications to the evidence received during the providence inquiry. With one exception, these are properly captured in the CMO dated 15 August 2011. As for the omitted substitution, pursuant to *United States v. Crumpley*, 49 M.J. 538, 539 (N.M. Ct. Crim. App. 1998), the supplemental CMO shall indicate the findings of the court-martial as to Specification 2 under the Charge excepted the word "drives" and substituted the word "drive."

The findings and the approved sentence are correct in law and fact and no error materially prejudicial to the substantial rights of the appellant occurred. Arts. 59(a) and 66(c), UCMJ. The findings and the sentence as approved by the CA are affirmed.

For the Court

R.H. TROIDL
Clerk of Court