

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

**Before
J.A. MAKSYM, J.R. PERLAK, G.G. GERDING
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**JONATHAN A. ALANIS
PRIVATE FIRST CLASS (E-2), U.S. MARINE CORPS**

**NMCCA 201100495
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 22 June 2011.

Military Judge: Col Michael Richardson, USMC.

Convening Authority: Commanding Officer, 5th Marine Regiment, 1st Marine Division (REIN), MarForPac, Camp Pendleton, CA.

Staff Judge Advocate's Recommendation: Col D.K. Margolin, USMC.

For Appellant: LtCol Richard Belliss, USMCR.

For Appellee: Mr. Brian Keller, Esq.

22 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 plea, of missing movement by design, in violation of Article 87, Uniform Code of Military Justice, 10 U.S.C. § 887. On 22 June 2011, the military judge sentenced the appellant to confinement for 12 months, reduction to pay grade E-1, forfeiture of \$978.00 pay per month for 12 months, and a bad-conduct discharge. On 22

September 2011, the convening authority (CA) approved the sentence as adjudged and, pursuant to a pretrial agreement (PTA), suspended all confinement in excess of 90 days.

Although not assigned as error, we note the PTA required the CA to suspend confinement in excess of 90 days "for the period of confinement served, at which time, unless sooner vacated, the suspended portion will be remitted without further action."

After announcing the sentence, the military judge asked the trial counsel and defense counsel if this provision of the PTA would result in the excess confinement being automatically remitted upon the appellant's release from confinement. Both parties agreed that would be the result. The military judge told the appellant this PTA provision "means that if you get out of the brig and you manage to get into trouble before they actually send you home on voluntary appellate leave, they no longer have that confinement time hanging over your head." Record at 67.

Whether by the express terms of the PTA or the agreement of the parties and the military judge's explanation at trial, the CA was bound to approve only 90 days of confinement, as the remainder of the confinement was automatically remitted upon the appellant's release from confinement. Therefore the CA erred when he suspended confinement in excess of 90 days from the date of his action.

We also note the CA ordered in his action that the entire sentence be executed. To the extent that the convening authority's action purported to execute the bad-conduct discharge, it was a nullity.

Therefore, we affirm the findings and only so much of the sentence as extends to confinement for 90 days, reduction to E-1, forfeiture of \$978.00 pay per month for 12 months, and a bad-conduct discharge.

For the Court

R.H. TROIDL
Clerk of Court