

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

**Before
F.D. MITCHELL, B.L. PAYTON-O'BRIEN, G.G. GERDING
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**JASON R. LAUBLE
PRIVATE (E-1), U.S. MARINE CORPS**

**NMCCA 201000607
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 30 July 2010.

Military Judge: CDR Carrie Stephens, JAGC, USN.

Convening Authority: Commanding Officer, 5th Battalion,
11th Marines, 1st Marine Division (REIN), FMF, Camp
Pendleton, CA.

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

For Appellant: Capt Peter Griesch, USMCR.

For Appellee: Mr. Brian Keller, Esq.

12 April 2011

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:

The appellant was convicted by military judge alone, pursuant to his pleas, of a single specification of unauthorized absence, in violation of Article 86, Uniform Code of Military Justice, 10 U.S.C. § 886. He was sentenced to confinement for 60 days, forfeiture of \$964.00 pay per month for two months, and a bad-conduct discharge. Pursuant to a pretrial agreement, the

convening authority suspended all confinement in excess of 49 days for a period of twelve months from the date of his action.¹

Although this case was submitted to this court without assignment of error, we note that the confinement to be suspended (11 days), was not deferred by operation of the pretrial agreement and the appellant's confinement time continued to run and had completely run by the date the convening authority took action on the sentence. Since more than 60 days elapsed from the date of sentencing (30 July 2010) to the convening authority taking action (27 October 2010), there was no unexecuted punishment left for the convening authority to suspend. See *United States v. Lamb* 22 M.J. 518 (N.M.C.M.R. 1986). The appellant does not allege that he served any more confinement than agreed to in the pretrial agreement.

We are convinced that the findings and sentence are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant occurred. The findings and sentence as approved by the convening authority are affirmed. The supplemental court-martial order will reflect that all of the adjudged confinement has been executed. Arts. 59(a) and 66(c), UCMJ.

For the Court

R.H. TROIDL
Clerk of Court

¹ The pretrial agreement required that the convening authority suspend all confinement in excess of time served in pretrial confinement, 39 days, plus ten days, for a total of 49 days.