

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

**Before  
B.L. PAYTON-O'BRIEN, J. MCFARLANE, M. MCALEVY  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**DOUGLAS E. TAYLOR  
GUNNER'S MATE SEAMAN RECRUIT (E-1), U.S. NAVY**

**NMCCA 201200272  
GENERAL COURT-MARTIAL**

**Sentence Adjudged:** 29 February 2012.

**Military Judge:** CAPT Carole Gaasch, JAGC, USN.

**Convening Authority:** Commander, Navy Region Southwest, San Diego, CA.

**Staff Judge Advocate's Recommendation:** CDR I.M. Nilsen, JAGC, USN.

**For Appellant:** CAPT Stephen White, JAGC, USN.

**For Appellee:** Mr. Brian Keller, Esq.

**31 October 2012**

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**OPINION OF THE COURT**  
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**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 general court-martial convicted the appellant, pursuant to his pleas, of wrongful disposition of military property and larceny, in violation of Articles 108 and 121, Uniform Code of Military Justice, 10 U.S.C. §§ 908 and 921. The appellant was sentenced to confinement for 13 months, a fine of \$386.00, a bad-conduct discharge, and as an enforcement provision for the fine, an

additional month of confinement if the fine was not paid. The convening authority (CA) approved the sentence as adjudged. Pursuant to a pretrial agreement, the CA agreed to suspend the fine and all confinement in excess of 12 months, and waive automatic forfeitures for six months for the benefit of the appellant's dependent.

This case was submitted without an assignment of error. We note that in taking his action, the CA stated that the suspension period for the confinement was to begin "from the date of this action and continue for the remainder of the accused's confinement plus twelve (12) months thereafter." However, this is inconsistent with the terms of the pretrial agreement which stated that the suspension period for confinement was "for the period of confinement served plus six months thereafter."

An accused who pleads guilty pursuant to a pretrial agreement is entitled to the fulfillment of any promises made by the Government as part of that agreement. *Santobello v. New York*, 404 U.S. 257, 262 (1971); *United States v. Smith*, 56 M.J. 271, 272 (C.A.A.F. 2002).

Thus, in taking his action, the CA erred by failing to enforce the terms of the pretrial agreement. When a CA fails to take action required by a pretrial agreement, this court has authority to enforce the agreement. *United States v. Cox*, 46 C.M.R. 69, 72 (C.M.A. 1972). We will take corrective action in our decretal paragraph.

### **Conclusion**

The findings and sentence are affirmed. The supplemental court-martial order shall indicate that the period of suspension runs for the period of confinement served plus six months thereafter. Following this correction, no error materially prejudicial to the substantial rights of the appellant remains. Arts. 59(a) and 66(c), UCMJ.

For the Court

R.H. TROIDL  
Clerk of Court