

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

**Before  
B.L. PAYTON-O'BRIEN, R.E. BEAL, R.Q. WARD  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**ROIE D. THOMPSON  
AVIATION ORDNANCEMAN AIRMAN (E-3), U.S. NAVY**

**NMCCA 201200146  
GENERAL COURT-MARTIAL**

**Sentence Adjudged:** 6 January 2012.

**Military Judge:** CDR Lewis Booker, JAGC, USN.

**Convening Authority:** Commander, Navy Region Northwest,  
Silverdale, WA.

**Staff Judge Advocate's Recommendation:** LCDR D.E. Rieke,  
JAGC, USN.

**For Appellant:** CDR Howard Liberman, JAGC, USN.

**For Appellee:** Capt Martin A. Grover, JAGC, USN; Capt David  
N. Roberts, USMC.

**31 May 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 attempted aggravated sexual contact with a child in violation of Article 80, Uniform Code of Military Justice, 10 U.S.C. § 880. The military judge sentenced the appellant to eleven months confinement, reduction to pay grade E-1, and a bad-conduct

discharge. The convening authority approved the sentence as adjudged and, except for the punitive discharge, ordered it executed. In accordance with a pretrial agreement (PTA), the convening authority deferred and then waived automatic forfeitures for a period of six months.

The appellant's sole assigned error is that the staff judge advocate's recommendation (SJAR) failed to note that the military judge recommended the convening authority defer and suspend automatic forfeitures as an act of clemency. In light of this error, the appellant requests we remand the case for a corrected SJAR and new action. We have carefully reviewed the record of trial and the parties' pleadings. We 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 was committed. Arts. 59(a) and 66(c), UCMJ.

When the appellant seeks relief for post-trial review errors, he must make some colorable showing of possible prejudice. *United States v. Danley*, 70 M.J. 556, 559 (N.M.Ct.Crim.App. 2011). In this case the appellant fails to carry his burden. The military judge made his clemency recommendation before pronouncing the sentence and reviewing the sentence limitation portion of the PTA. As noted above, one of the PTA's provisions was the convening authority's agreement to defer and waive automatic forfeitures. While it was error for the SJAR to omit the military judge's recommendation for clemency, the error is non-prejudicial because the appellant received the recommended act of clemency. Accordingly, the findings and sentence are affirmed.

For the Court

R.H. TROIDL  
Clerk of Court