

# United States Navy–Marine Corps Court of Criminal Appeals

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**UNITED STATES**

Appellee

v.

**Joshua M. MONTEZ**

Lance Corporal (E-3), U.S. Marine Corps

Appellant

**No. 201800313**

Appeal from the United States Navy-Marine Corps Trial Judiciary.

Military Judge:

Colonel Matthew J. Kent, USMC.

Decided: 8 February 2019.

Sentence adjudged 26 July 2018 by a general court-martial convened at Camp Pendleton, California, consisting of a military judge sitting alone. Sentence approved by the convening authority: reduction to paygrade E-1, confinement for thirty-six months, and a dishonorable discharge.

For Appellant:

*Lieutenant Colonel Lee C. Kindlon, USMCR.*

For Appellee:

*Brian K. Keller, Esq.*

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Before HUTCHISON, TANG, and LAWRENCE

*Appellate Military Judges*

PER CURIAM:

After careful consideration of the record, submitted without assignment of error, we have determined that the approved findings and sentence are correct in law and fact and that no error materially prejudicial to Appellant's

substantial rights occurred. Articles 59(a) and 66(c), UCMJ, 10 U.S.C. §§ 859(a), 866(c).

However, we note that the court-martial order (CMO) erroneously reflects that the appellant pleaded Guilty and was found Guilty of Specification 2 of Charge III. In fact, he entered a plea of Not Guilty. Pursuant to the pre-trial agreement, the government moved the trial court to withdraw and dismiss without prejudice the offenses to which the appellant pleaded Not Guilty, to ripen into prejudice upon completion of appellate review, and the military judge granted that request.

The appellant is entitled to accurate court-martial records. *United States v. Crumpley*, 49 M.J. 538, 539 (N-M. Ct. Crim. App. 1998). Accordingly, the convening authority shall issue a supplemental CMO that correctly reflects the pleas and findings, or other dispositions, for each charge and specification on which the appellant was arraigned, as required by RULE FOR COURTS-MARTIAL 1114(c)(1), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2016 ed.). Specifically, the supplemental CMO shall reflect: (1) that the appellant pleaded Not Guilty to Specification 2 of Charge III; and (2) that the military judge granted the government's motion to withdraw and dismiss without prejudice the offenses to which the appellant pleaded Not Guilty, to ripen into prejudice upon completion of appellate review.

The findings and sentence as approved by the convening authority are **AFFIRMED**.



FOR THE COURT:

A handwritten signature in blue ink that reads "Rodger A. Drew, Jr." with a stylized flourish at the end.

RODGER A. DREW, JR.  
Clerk of Court