

United States Navy–Marine Corps Court of Criminal Appeals

UNITED STATES

Appellee

v.

Gherson FERNANDEZ

Aviation Structural Mechanic Second Class (E-5), U.S. Navy
Appellant

No. 201900047

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

Decided: 13 May 2019.

Military Judges:

Captain Aaron C. Rugh, JAGC, USN (arraignment);

Captain Jonathan T. Stephens, JAGC, USN (trial).

Sentence adjudged 1 October 2018 by a general court-martial convened at Naval Base San Diego, California, consisting of a military judge sitting alone. Sentence approved by convening authority: reduction to E-1, forfeiture of all pay and allowances, confinement for 7 years,¹ and a dishonorable discharge.

For Appellant:

Lieutenant Commander W. Scott Stoebner, JAGC, USN.

For Appellee:

Brian K. Keller, Esq.

**This opinion does not serve as binding precedent under
NMCCA Rule of Appellate Procedure 30.2(a).**

¹ The Convening Authority suspended confinement in excess of 60 months pursuant to a pretrial agreement.

Before HUTCHISON, LAWRENCE, and ATTANASIO,
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 and 66, UCMJ, 10 U.S.C. §§ 859, 866. However, we note that the court-martial order (CMO) does not accurately reflect that Specifications 1, 2, 3, 4, and 5 of the Charge were withdrawn and dismissed without prejudice prior to findings. The appellant is entitled to have court-martial records that correctly reflect the content of his proceeding. *United States v. Crumpley*, 49 M.J. 538, 539 (N-M. Ct. Crim. App. 1998). Accordingly, the supplemental CMO shall reflect that Specifications 1, 2, 3, 4, and 5 under the Charge were withdrawn and dismissed without prejudice, to ripen into prejudice upon completion of appellate review.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