

This opinion is subject to administrative correction before final disposition.

United States Navy - Marine Corps
Court of Criminal Appeals

Before
TANG, LAWRENCE, and COGLEY
Appellate Military Judges

UNITED STATES
Appellee

v.

Clayton R. CARMACK
Lance Corporal (E-3), U.S. Marine Corps
Appellant

No. 202000016

Decided: 8 June 2020

Appeal from the United States Navy-Marine Corps Trial Judiciary

Military Judge:
Andrea C. Goode

Sentence adjudged 23 August 2019 by a special court-martial convened at Marine Corps Base Camp Pendleton, California, consisting of a military judge sitting alone. Sentence as reflected in the Entry of Judgment: reduction to E-1, confinement for five months, and a bad-conduct discharge.

For Appellant:
Captain Kimberly D. Hinson, 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).**

United States v. Carmack, NMCCA No. 202000016
Opinion of the Court

PER CURIAM:

After careful consideration of the record, submitted without assignment of error, we have determined that the findings and sentence are correct in law and fact and that no error materially prejudicial to Appellant's substantial rights occurred. Articles 59, 66, Uniform Code of Military Justice [UCMJ], 10 U.S.C. §§ 859, 866 (2019).

However, we note that the Entry of Judgment does not accurately reflect the sentence, in that it erroneously omitted the adjudged reduction in rank to E-1, which was announced on the record and included in the Statement of Trial Results. We find no evidence of modification by reason of any post-trial action by the convening authority or any ruling, order, or other determination by the military judge. *See* Article 60c(a)(1)(B), UCMJ. Hence, we conclude the discrepancy is a scrivener's error and *ultra vires*. Although we find no prejudice, 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). In accordance with Rule for Courts-Martial 1111(c)(2), we modify the Entry of Judgment and direct that it be included in the record.

The findings and sentence are **AFFIRMED**.



FOR THE COURT:

A handwritten signature in blue ink, reading "Roger A. Drew, Jr." with a stylized flourish at the end.

RODGER A. DREW, JR.
Clerk of Court

United States Navy - Marine Corps
Court of Criminal Appeals

UNITED STATES

v.

Clayton R. CARMACK
Lance Corporal (E-3)
U.S. Marine Corps
Accused

NMCCA NO. 202000016

**ENTRY
OF
JUDGMENT**

As Modified on Appeal

8 June 2020

On 23 August 2019, the Accused was tried at Marine Corps Base Camp Pendleton, California, by a special court-martial, consisting of a military judge sitting alone. Military Judge Andrea C. Goode presided.

FINDINGS

The following are the Accused's pleas and the Court's findings to all offenses the convening authority referred to trial:

Charge I: Violation of Article 128, Uniform Code of Military Justice, 10 U.S.C. § 928.

Plea: Guilty.

Finding: Guilty.

Specification 1: Assault Consummated by a Battery on or about 22 April 2018.

Plea: Guilty.

Finding: Guilty.

Specification 2: Simple Assault on or about 22 April 2018.

Plea: Not Guilty.

Finding: Dismissed.

Specification 3: Assault Consummated by a Battery on or about 22 April 2018.

Plea: Guilty By Exceptions and Substitutions.*

Finding: Guilty By Exceptions and Substitutions.*

* GUILTY, except for the words, “commit an assault on E.M.L. by putting his hands on her neck and applying pressure, with a means or force likely to produce death or grievous bodily harm, to wit: by applying pressure to her neck with his hands” substituting therefor the words “unlawfully push E.M.L. on her neck with his hand”; of the excepted words, NOT GUILTY, of the substituted words, GUILTY, of the Specification as excepted and substituted, GUILTY.

Specification 4: Aggravated Assault on or about 22 April 2018.

Plea: Not Guilty.

Finding: Dismissed.

Charge II: Violation of Article 134, Uniform Code of Military Justice, 10 U.S.C. § 934.

Plea: Not Guilty.

Finding: Dismissed.

Specification: Obstruction of Justice between on or about 22 April 2018 and 31 July 2018.

Plea: Not Guilty.

Finding: Dismissed.

SENTENCE

On 23 August 2019, the military judge sentenced the Accused to the following:

Reduction to pay grade E-1.

Confinement for five months.

A bad-conduct discharge.

United States v. Carmack, NMCCA No. 202000016
Modified Entry of Judgment



FOR THE COURT:

A handwritten signature in blue ink, reading "Roger A. Drew, Jr.", with a stylized flourish at the end.

RODGER A. DREW, JR.
Clerk of Court