

This opinion is subject to administrative correction before final disposition.

United States Navy - Marine Corps
Court of Criminal Appeals

Before
KING, STEPHENS, and COGLEY,
Appellate Military Judges

UNITED STATES
Appellee

v.

Wiley A. RUSSELL
Lance Corporal (E-3), U.S. Marine Corps
Appellant

No. 202000017

Decided: 30 April 2020

Appeal from the United States Navy-Marine Corps Trial Judiciary

Military Judge:
Wilbur Lee

Sentence adjudged 1 November 2019 by a special court-martial convened at Marine Corps Base Camp Hawaii, Kaneohe Bay, consisting of a military judge sitting alone. Sentence approved by the convening authority: reduction to E-1, confinement for 90 days, forfeiture of \$1,100 per month for three 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).**

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 and 66, Uniform Code of Military Justice, [UCMJ] 10 U.S.C. §§ 859, 866.

However, we note that the Entry of Judgment does not accurately reflect the forfeiture portion of the sentence that was adjudged. The Entry of Judgment shows that the forfeiture portion of the sentence was for "\$1,000 per month for months." The missing figure between the words "for" and "months" presumably should contain a number specifying the number of months the forfeitures would run. However, the Statement of Trial Results accurately reflects the sentence announced by the Military Judge on the record, which was that the forfeiture portion of the sentence was for \$1,100 per month for three months. The convening authority took no action to modify the adjudged sentence. We find no other 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 this Court's authority under Rule for Courts-Martial 1111(c)(2), Manual for Courts-Martial, United States (2019 ed.), we modify the Entry of Judgment and direct that it be included in the record. The findings and sentence are **AFFIRMED**.



FOR THE COURT:


RODGER A. DREW, JR.
Clerk of Court

United States Navy - Marine Corps
Court of Criminal Appeals

UNITED STATES

v.

Wriley A. RUSSELL
Lance Corporal (E-3)
U.S. Marine Corps

Accused

NMCCA NO. 202000017

ENTRY
OF
JUDGMENT

As Modified on Appeal

30 April 2020

On 1 November 2019, the Accused was tried at Marine Corps Base Hawaii, Kaneohe Bay, by a special court-martial, consisting of a military judge sitting alone. Military Judge Wilbur Lee 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 81, Uniform Code of Military Justice, 10 U.S.C. § 881.

Plea: Not Guilty.

Finding: Withdrawn and dismissed.

Specification: Conspiracy to Use a Controlled Substance between on or about 12 April 2019 and on or about 1 June 2019.

Plea: Not Guilty.

Finding: Withdrawn and dismissed.

Charge II: Violation of Article 112a, Uniform Code of Military Justice, 10 U.S.C. § 912a.

Plea: Guilty.

Finding: Guilty.

Specification 1: Wrongful Use of a Controlled Substance (Cocaine) between on or about 9 March 2019 and on or about 12 March 2019.

Plea: Guilty.

Finding: Guilty.

Specification 2: Wrongful Use of a Controlled Substance (Cocaine) between on or about 12 April 2019 and on or about 22 April 2019.

Plea: Guilty.

Finding: Guilty.

Specification 3: Wrongful Use of a Controlled Substance (Cocaine) between on or about 29 May 2019 and on or about 3 June 2019.

Plea: Guilty.

Finding: Guilty.

Specification 4: Wrongful Use of a Controlled Substance (Cocaine) between on or about 4 June 2019 and on or about 2 July 2019.

Plea: Guilty.

Finding: Guilty.

Specification 5: Wrongful Distribution of a Controlled Substance (Cocaine) between on or about 27 May 2019 and on or about 3 June 2019.

Plea: Not Guilty.

Finding: Withdrawn and Dismissed.

Charge III: Violation of Article 120, Uniform Code of Military Justice, 10 U.S.C. § 920.

Plea: Not Guilty.

Finding: Withdrawn and Dismissed.

Specification: Abusive Sexual Contact on or about 26 June 2019.

Plea: Not Guilty

Finding: Withdrawn and Dismissed.

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

Plea: Guilty.

Finding: Guilty.

Specification 1: Indecent Conduct on or about 28 April 2019.

Plea: Not Guilty.

Finding: Withdrawn and Dismissed.

Specification 2: Drunk and Disorderly on or about 28 April 2019.

Plea: Guilty.

Finding: Guilty.

SENTENCE

On 1 November 2019, a military judge sentenced the Accused to the following:

Reduction to pay grade E-1.

Confinement:

For Specification 1 of Charge II: confinement for 90 days.

For Specification 2 of Charge II: confinement for 90 days;

For Specification 3 of Charge II: confinement for 90 days;

For Specification 4 of Charge II: confinement for 90 days;

For Specification 2 of Charge IV; confinement for 30 days.

The terms of confinement will run concurrently.

Forfeiture of \$1,100 pay per month for three months.

A bad-conduct discharge.



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