

This opinion is subject to administrative correction before final disposition.

United States Navy - Marine Corps
Court of Criminal Appeals

Before
HITESMAN, GASTON, and FOIL,
Appellate Military Judges

UNITED STATES
Appellee

v.

Thomas J. SMETANKA
Hospitalman (E-3), U.S. Navy
Appellant

No. 201900252

Decided: 18 March 2020.

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

Military Judge: Hayes C. Larson

Sentence adjudged 10 May 2019 by a general court-martial convened at Naval Station Norfolk, Virginia, consisting of a military judge sitting alone. Sentence in the Entry of Judgment: reduction to E-1, confinement for 60 months,¹ and a dishonorable discharge.

For Appellant:

Lieutenant Commander Derek C. Hampton, JAGC, USN.

For Appellee:

Brian K. Keller, Esq.

¹ In accordance with the pretrial agreement, the convening authority suspended confinement in excess of 36 months.

**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 disposition of the charges. The Entry of Judgment omits that Appellant pleaded and was found guilty of Specification 4 of Charge I, Attempted Sexual Abuse of a Child Involving Indecent Conduct, on or about 21 September 2017. The Statement of Trial Results accurately reflects the guilty plea and finding for this specification, and 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 omission 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), 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, appearing to read "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.

Thomas J. SMETANKA
Hospitalman (E-3)
U.S. Navy

Accused

NMCCA NO. 201900252

ENTRY
OF
JUDGMENT

As Modified on Appeal

18 March 2020

On 10 May 2019, the Accused was tried at Naval Station Norfolk, Virginia, by a general court-martial, consisting of a military judge sitting alone. Military Judge Hayes C. Larson 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 80, Uniform Code of Military Justice, 10 U.S.C. § 880.

Plea: Guilty.

Finding: Guilty.

Specification 1: Attempted Sexual Assault of a Child on or about 21 September 2017.

Plea: Guilty.

Finding: Guilty.

Specification 2: Attempted Receipt of Child Pornography on or about 21 September 2017.

Plea: Guilty.

Finding: Guilty.

Specification 3: Attempted Sexual Abuse of a Child Involving Indecent Communication on or about 21 September 2017.

Plea: Guilty.

Finding: Guilty.

Specification 4: Attempted Sexual Abuse of a Child Involving Indecent Conduct on or about 21 September 2017.

Plea: Guilty.

Finding: Guilty.

Charge II: Violation of Article 107, Uniform Code of Military Justice, 10 U.S.C. § 907.

Plea: Guilty.

Finding: Guilty.

Specification: False Official Statement on or about 21 September 2017.

Plea: Guilty.

Finding: Guilty.

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

Plea: Guilty.

Finding: Guilty.

Specification 1: Sexual Assault on or about 16 March 2015.

Plea: Not Guilty.

Finding: Withdrawn and dismissed.

Specification 2: Sexual Assault on or about 16 March 2015.

Plea: Not Guilty.

Finding: Withdrawn and dismissed.

Specification 3: Abusive Sexual Contact on or about 16 March 2015.

Plea: Guilty.

Finding: Guilty.

SENTENCE

On 10 May 2019, a military judge sentenced the Accused to the following sentence:

Reduction to pay grade E-1.

Confinement for 60 months.

A dishonorable discharge.

The convening authority suspended confinement in excess of 36 months for a period of 12 months from 6 August 2019.



FOR THE COURT:

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

RODGER A. DREW, JR.
Clerk of Court