IN THE U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS
WASHINGTON NAVY YARD
WASHINGTON, D.C.

BEFORE

C.L. CARVER **D.O. VOLLENWEIDER** **R.G. KELLY**

UNITED STATES

v.

Cryston M. NEWTON
Dentalman (E-3), U. S. Navy

NMCCA 200101607 Decided 31 July 2006

Sentence adjudged 17 May 2001. Military Judge: R.N. Johnson. Review pursuant to Article 66(c), UCMJ, of Special Court-Martial convened by Commanding Officer, United States Naval Dental Center Europe, Naples, Italy.

LT REBECCA S. SNYDER, JAGC, USNR, Appellate Defense Counsel
LT DARRIN MACKINNON, JAGC, USNR, Appellate Defense Counsel
LT ADRIENNE GAGLIARDO, JAGC, USN, Appellate Government Counsel
Maj KEVIN HARRIS, USMC, Appellate Government Counsel
LT CHRISTOPHER BURRIS, JAGC, USNR, Appellate Government Counsel

VOLLENWEIDER, Judge:

The appellant was convicted, pursuant to her pleas, of two uses of ecstasy, and one introduction of ecstasy, under Article 112a, Uniform Code of Military Justice, 10 U.S.C. § 912a. She was sentenced to confinement for 45 days, forfeiture of $688.00 pay per month for one month, reduction in rank to pay grade E-1, and a bad-conduct discharge. We find that the findings are supported by the record, but that the unique circumstances in this case require partial sentencing relief. We find no other error materially prejudicial to the substantial rights of the appellant. Articles 59(a) and 66(c), Uniform Code of Military Justice, 10 U.S.C. §§ 859(a) and 866(c).

The appellant was tried, by military judge alone, on 17 May 2001. After a two year delay caused in large part by the Government's failure to attach the legal officer's recommendation and the appellant's clemency request to the record of trial, this court found error in the convening authority's undated action

because the convening authority did not consider the appellant's clemency petition, and the promulgating order incorrectly stated the pleas and findings as to Specification 1 of Charge I (alleging drug distribution). We returned the record in April 2003 for resubmission to an appropriate convening authority for a new staff judge advocate's or legal officer's recommendation and a new convening authority's action that considered all clemency submissions.

Two and a half years later, a staff judge advocate's recommendation was issued, and a new court-martial order and convening authority's action (by a new convening authority) was promulgated, on 14 October 2005. The newest court-martial order is again in error. It states that the appellant pled not guilty to distribution, but was found guilty nonetheless. This is incorrect. She pled not guilty and was found not guilty.

It is neither obvious nor readily apparent whether the new convening authority considered the distribution charge, of which the appellant was found not guilty, when affirming the sentence in this case. The only fact obvious is that the convening authority did not consider this offender or these offenses sufficiently serious to act in less than two and a half years after remand, or important enough to do the job correctly. Rather than return this case for yet another court-martial order and convening authority's action, engendering further unwarranted delay, and mindful of this court's duties to ensure reasonable case processing times (*see, e.g., United States v.* Moreno, 63 M.J. 129 (C.M.A. 2006)), we find that the appropriate remedy is to approve the findings, supported by the appellant's guilty pleas, and disapprove the bad-conduct discharge and forfeitures.[1]

Conclusion

Accordingly, we affirm the findings of guilty and only that portion of the sentence as extends to confinement for 45 days and reduction to pay grade E-1. We further direct that the supplemental court-martial order correctly reflect the charges, specifications, pleas, and findings.

Senior Judge CARVER and Judge KELLY concur.

For the Court

R.H. TROIDL
Clerk of Court

[1] We find no merit in the appellant's improper argument assignment of error, and note that the issue was waived by trial defense counsel's choice not to object.