

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

BEFORE

C.A. PRICE

E.B. HEALEY

R.C. HARRIS

UNITED STATES

v.

**Justin L. WILER
Seaman Recruit (E-1), U.S. Navy**

NMCCA 200400100

Decided 11 February 2005

Sentence adjudged 5 September 2003. Military Judge: N.H. Kelstrom. Review pursuant to Article 66(c), UCMJ, of Special Court-Martial convened by Commanding Officer, Service School Command, Great Lakes, IL.

Maj J.ED CHRISTIANSEN, USMC, Appellate Defense Counsel
CDR JEFFREY W. MCCRAY, JAGC, USNR, Appellate Defense Counsel
LT KATHLEEN A. HELMANN, JAGC, USNR, Appellate Government Counsel

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.

PRICE, Senior Judge:

We have considered the record of trial and the assignments of error that: (1) the convening authority did not personally sign the convening authority's action (CAA); and, (2) the court-martial promulgating order (CMO) and the staff judge advocate's recommendation (SJAR) misstate the appellant's pleas. We have also considered the Government's response conceding error as to the signature issue and requesting that we remand the case for a new CAA.

RULE FOR COURTS-MARTIAL 1107(f)(1), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2002 ed.) requires the convening authority to personally sign the CAA. In this case, aside from the CMO, there is no separate CAA in the record. The CMO is signed in this fashion:

/S/ JOHN REICHL
Captain, U.S. Navy
Commanding Officer
Service School Command
Great Lakes, Illinois

AUTHENTICATION

E. V. HARTMAN
Lieutenant, JAGC,
U.S. Naval Reserve
Command Judge Advocate
Service School Command
Great Lakes, Illinois
By direction of the
Commanding Officer
Service School Command
Great Lakes, Illinois

CMO of 7 Jan 2004 at 3. What appears to be Lieutenant Hartman's signature appears over his typed name.

If a separate CAA personally signed by the convening authority were included in the record, we would have no issue in this case, since a command judge advocate may properly sign the CMO by direction after the convening authority takes and personally signs his action. R.C.M. 1114(e). However, that is not the case, and other than the foregoing signature block on the CMO, we have no reason to believe that the convening authority ever personally took, much less signed, an action. Accordingly, we accept the Government's concession and agree with the suggested relief.

The convening authority's action is set aside. The record is returned to the Judge Advocate General for remand to the convening authority for a new action to be taken in compliance with R.C.M. 1107. Following completion of that action, the record shall be returned to this court for completion of appellate review. The remaining assignment of error is moot, but we expect that the new CMO will correctly state the appellant's pleas.

Judge HEALEY and Judge HARRIS concur.

For the Court

R.H. TROIDL
Clerk of Court