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.

Randy J. BEDFORD
Private (E-1), U.S. Marine Corps

NMCCA 200401619 Decided 31 January 2005

Sentence adjudged 21 January 2004. Military Judge: P.J. Ware. Review pursuant to Article 66(c), UCMJ, of Special Court-Martial convened by Commanding Officer, 1st Transportation Support Battalion, 1st FSSG, MarForPac, Camp Pendleton, CA.

LT ANTHONY S. YIM, JAGC, USNR, Appellate Defense Counsel
CDR HANS GRAFF, JAGC, USNR, Appellate Defense Counsel
CDR CHARLES PURNELL, JAGC, USN, Appellate Government Counsel

HEALEY, Judge:

A military judge, sitting as a special court-martial, convicted the appellant, pursuant to his pleas, of failure to obey a lawful order, wrongful use of methamphetamine (four specifications), and theft, in violation of Articles 92, 112a, and 121, Uniform Code of Military Justice, 10 U.S.C. §§ 892, 912a, and 921. The appellant was sentenced to confinement for six months and a bad-conduct discharge. The convening authority approved the sentence as adjudged.

We have carefully considered the record of trial, submitted without the assignment of error. Except as noted below, we conclude that the findings and sentence are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant was committed. *See* Arts. 59(a) and 66(c), UCMJ.

Although not assigned as an error, the convening authority failed to suspend confinement in excess of 180 days, as he was obligated to do under the terms of the pretrial agreement. The fault for this error apparently lies with both the staff judge

advocate and the military judge. At trial, the military judge incorrectly advised the appellant that he "awarded 180 days essentially by saying six months" so there would be no confinement to be suspended under the terms of the pretrial agreement. Record at 65. The staff judge advocate failed to discuss the variance between the sentence and the pretrial agreement.

Under the circumstances of this case, a sentence to six months confinement does not equate to 180 days confinement. The appellant's sentence was adjudged on 21 January 2004. If the appellant were to serve six months of confinement, his release date would be 20 July 2004. However, if he were to serve 180 days of confinement, his release date would be two days sooner, 18 July 2004.[1] *See* Secretary of the Navy Instruction 1640.9B at ¶¶ 9303 and 9312 (2 Dec 1996).

"While 30 days may equate to a month for many commercial purposes, such is certainly not the case when dealing with confinement, and this Court has consistently so held." *United States v. Steward*, 55 M.J. 630, 631 (N.M.Ct.Crim.App. 2001) (quoting *United States v. Calvin*, No. 9001685, unpublished op. (N.M.C.M.R. 22 Aug 1990)). We reiterate our cautionary comment from *Steward* that military judges and staff judge advocates alike should be aware of this "months versus days" issue in order to avoid approving more confinement than authorized by either the sentence adjudged or the pretrial agreement.[2]

In the absence of evidence to the contrary, we presume that the appellant served extra confinement and was thereby prejudiced. Accordingly, we affirm the findings and only so much of the sentence as provides for confinement for 180 days and a bad-conduct discharge.

Senior Judge PRICE and Judge HARRIS concur.

For the Court

R.H. TROIDL
Clerk of Court

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[1] This release date is unadjusted for pretrial confinement credit and good conduct time.

[2] For special courts-martial like this one, as to confinement, uniform use of days (vice months) in stating sentences and pretrial agreement limits may help to eliminate confusion.