

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

**BEFORE**

**Charles Wm. DORMAN**

**W.L. RITTER**

**E.E. GEISER**

**UNITED STATES**

**v.**

**Marcus J. JONES  
Lance Corporal (E-3), U.S. Marine Corps**

NMCCA 200500694

Decided 29 November 2005

Sentence adjudged 8 March 2004. Military Judge: P.J. Ware.  
Review pursuant to Article 66(c), UCMJ, of Special Court-Martial  
convened by Commanding Officer, 1st Battalion, 7th Marines, 1st  
Marine Division, MCAGCC, Twentynine Palms, CA.

LT ANTHONY YIM, JAGC, USNR, Appellate Defense Counsel  
CAPT DIANE KARR, JAGC, USNR, Appellate Defense Counsel  
Maj KEVIN HARRIS, USMC, Appellate Government Counsel  
LtCol PAUL KOVAC, USMCR, Appellate Government Counsel

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.

RITTER, Senior Judge:

A military judge sitting as a special court-martial convicted the appellant, pursuant to his pleas, of six specifications of larceny and five specifications of forgery, in violation of Articles 121 and 123, Uniform Code of Military Justice, 10 U.S.C. §§ 921 and 923. The appellant was sentenced to confinement for seven months, reduction to pay grade E-1, and a bad-conduct discharge. The convening authority approved the adjudged sentence but, pursuant to a pretrial agreement, suspended confinement in excess of six months.

We have carefully considered the record, the appellant's sole assignment of error, and the Government's response. 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. Arts. 59(a) and 66(c), UCMJ.

### Jurisdictional Maximum at Appellant's Trial

The appellant contends that his sentence exceeded the jurisdictional maximum of his special court-martial, because the convening order was dated before the effective date of the 2002 Amendments to the MANUAL FOR COURTS-MARTIAL, UNITED STATES. We disagree.

The effective date of the 2002 Amendments was 15 May 2002. 67 Fed. Reg. 18773 (Executive Order 113262). At that time, RULE FOR COURTS-MARTIAL 201(f)(2)(B)(i), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2002 ed.) was changed, increasing the jurisdictional maximum for confinement at a special court-martial from six months to one year. The appellant committed his offenses in July and August of 2003, well over a year later. His case was referred to trial on 7 January 2004, using a two-year-old convening order dated 18 January 2002.

In *Taylor v. Garaffa*, 57 M.J. 645 (N.M.Ct.Crim.App. 2002), we noted that under "long-standing principles of military law," a court-martial proceeding "did not begin until the convening authority convened the court-martial **and** referred his case to it." (citing 1 F. GILLIGAN & F. LEDERER, COURT-MARTIAL PROCEDURE 512 (2d ed. 1999))(emphasis added). Since both actions of convening and referring are required to "begin" a case, and the act of referral must always be the later of the two, it is the date of referral that determines when a case "begins." Indeed, Congress specifically stated that the subject amendments would apply "with respect to charges **referred** on or after" the effective date. Pub.L. No. 106-65, Div. A, Title V, Subtitle J, § 577(b), 113 Stat. 625 (codified at 10 U.S.C. § 819)(Oct. 5, 1999) (emphasis added).

To the extent our language in *Taylor v. Garaffa* may suggest otherwise, it is imprecise. But we do not read that case as making the date of the convening order determinative of the jurisdictional limits of a special court-martial. Nor do we find anything in the 2002 Amendments or the executive order implementing them that requires us to find that this court-martial "began" before the appellant committed any charged offense.

Since the appellant's charges were referred to court-martial after the effective date of the 2002 Amendments, the military judge in his case could adjudge confinement up to a jurisdictional maximum of one year in duration. The adjudged

sentence fell well within that limitation. Accordingly, we affirm the findings and sentence, as approved by the convening authority.

Chief Judge DORMAN and Judge GEISER concur.

For the Court

R.H. TROIDL  
Clerk of Court