

**UNITED STATES NAVY-MARINE CORPS
COURT OF CRIMINAL APPEALS
WASHINGTON, D.C.**

**Before
M.D. MODZELEWSKI, R.G. KELLY, C.K. JOYCE
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**DONALD E. PUMP, JR.
CAPTAIN (O-3), U.S. MARINE CORPS**

**NMCCA 201200383
GENERAL COURT-MARTIAL**

Sentence Adjudged: 9 May 2012.

Military Judge: Col G.W. Riggs, USMC.

Convening Authority: Commanding General, U.S. Marine Corps
Forces Command, Norfolk, VA.

Staff Judge Advocate's Recommendation: LtCol D.J. Bligh,
USMC.

For Appellant: CDR R.D. Evans, Jr., JAGC, USN.

For Appellee: LT Lindsay P. Geiselman, JAGC, USN.

27 December 2012

OPINION OF THE COURT

**THIS OPINION DOES NOT SERVE AS BINDING PRECEDENT, BUT MAY BE CITED AS
PERSUASIVE AUTHORITY UNDER NMCCA RULE OF PRACTICE AND PROCEDURE 18.2.**

PER CURIAM:

A military judge sitting as a general court-martial convicted the appellant, pursuant to his pleas, of willful dereliction of duty and wrongful receipt of stolen property, in violation of Articles 92 and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 892 and 934. The military judge sentenced the appellant to confinement for 18 months, forfeiture of \$2,500.00 pay per month for 18 months, a fine of \$10,000.00, and a dismissal. In accordance with a pretrial agreement, the

convening authority approved the adjudged sentence, but suspended the forfeitures, the fine, and confinement in excess of six months.¹

Although the appellant elected trial by military judge alone, he now asserts that the court-martial lacked jurisdiction over him because the convening order listed a Chief Warrant Officer 5 (CWO 5) as one of the ten officer members of the court. After careful consideration of this sole assignment of error, we conclude that the matter raised by the appellant is unfounded in fact² and does not merit either relief or further analysis. *United States v. Matias*, 25 M.J. 356, 363 (C.M.A. 1987).

Upon our review of the record of trial, we conclude that the findings and the sentence are correct in law and fact, and that no error materially prejudicial to the substantial rights of the appellant exists. Arts. 59(a) and 66(c), UCMJ. We affirm the findings and sentence as approved by the convening authority.

For the Court

R.H. TROIDL
Clerk of Court

¹ To the extent that the convening authority's action purported to execute the bad-conduct discharge, it was a nullity. *United States v. Bailey*, 68 M.J. 409 (C.A.A.F. 2009).

² Contrary to the appellant's underlying premise, a CWO 5 is a commissioned officer. See 10 U.S.C. § 571 ("Appointments in regular chief warrant officer grades shall be made by commission by the President . . ."). Moreover, even were the CWO 5 disqualified, the panel was nevertheless composed of nine lawfully appointed members, well in excess of the five required for a general court-martial. Art. 16, UCMJ, 10 U.S.C. § 816. Thus, there was a court-martial composed of both judge and members, with jurisdiction over the case, when the appellant elected to proceed with trial by judge alone. See *United States v. Emerson*, 12 M.J. 512 (NMCMR 1981).