

**UNITED STATES COAST GUARD COURT OF CRIMINAL APPEALS
Washington, D.C.**

UNITED STATES

v.

**Daniel J. ZRIKE
Seaman Apprentice (E-2), U.S. Coast Guard**

CGCMS 24377

Docket No. 1289

13 March 2008

Special Court-Martial convened by Commander, Coast Guard Sector New York. Tried at New York, New York, on 4 April 2007.

Military Judge:	CDR Timothy G. Stueve, USCG
Trial Counsel:	LT John D. Cashman, USCG
Defense Counsel:	LT Ian Santicola, JAGC, USN
Appellate Defense Counsel:	LCDR Sandra J. Miracle, USCG
Appellate Government Counsel:	LCDR Patrick M. Flynn, USCG LCDR Brian K. Koshulsky, USCG

**BEFORE
MCCLELLAND, KANTOR & PEPPER**
Appellate Military Judges

Per Curiam:

Appellant was tried by special court-martial, military judge alone. Pursuant to his pleas of guilty, entered in accordance with a pretrial agreement, Appellant was convicted of one specification of conspiracy to possess cocaine, in violation of Article 81, Uniform Code of Military Justice (UCMJ); and one specification each of wrongful use of cocaine and of marijuana, both in violation of Article 112a, UCMJ. The military judge sentenced Appellant to a bad-conduct discharge, confinement for sixty days, and reduction to E-1. The Convening Authority approved the sentence as adjudged. The pretrial agreement had no effect on the adjudged sentence.

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Before this Court, without admitting that the findings and sentence are correct in law and fact, Appellant has submitted this case on its merits as to any and all errors. However, Appellant noted that the staff judge advocate incorrectly stated in his recommendation that Appellant was subject to an order of pretrial restriction on 15 February 2007 although he was actually placed on restriction on 29 January 2007.

The record indeed reflects, on the charge sheet and elsewhere, that Appellant was restricted on 29 January 2007. The initial memo informing him of his restriction is not part of the record, but is referenced by Appellate Exhibit VI, dated 15 February 2007, which amended it. Appellant served a total of sixty-five days of pretrial restriction, rather than forty-eight days as the Staff Judge Advocate's Recommendation (SJAR) implied.

This error in the SJAR was not noted in Appellant's clemency package. We do not condone the error, but we deem it inconsequential, as well as waived. We are certain it had no effect on the Convening Authority's action.

We have reviewed the record in accordance with Article 66, UCMJ. Upon such review, the findings and sentence are determined to be correct in law and fact and, on the basis of the entire record, should be approved. Accordingly, the findings of guilty and the sentence, as approved below, are affirmed.



For the Court,

Jane R. Lim
Clerk of the Court