

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

**UNITED STATES**

**v.**

**Matthew J. WESTVEER  
Machinery Technician Third Class (E-4), U.S. Coast Guard**

**CGCMG 0247**

**Docket No. 1305**

**27 October 2009**

General Court-Martial convened by Commander, First Coast Guard District. Tried at New York, New York, on 13 December 2007.

|                               |                              |
|-------------------------------|------------------------------|
| Military Judge:               | CAPT Brian M. Judge, USCG    |
| Trial Counsel:                | LT Lisa M. LaPerle, USCGR    |
| Defense Counsel:              | LT Allen Linken, JAGC, USN   |
| Appellate Defense Counsel:    | LT Robert M. Pirone, USCGR   |
|                               | LCDR Jeffery S. Howard, USCG |
| Appellate Government Counsel: | LT Alfred J. Thompson, USCGR |

**BEFORE  
McCLELLAND, TOUSLEY & McGUIRE  
Appellate Military Judges**

Per curiam:

Appellant was tried by general court-martial, military judge alone. Pursuant to his pleas of guilty, entered in accordance with a pretrial agreement, Appellant was convicted of two specifications of failure to obey a general order and two specifications of dereliction of duty, in violation of Article 92, Uniform Code of Military Justice (UCMJ); one specification of assault, in violation of Article 128, UCMJ; and one specification of attempting to receive child pornography, in violation of Article 134, UCMJ. The military judge sentenced Appellant to confinement for twelve months, reduction to E-3, and a bad-conduct discharge. The Convening Authority approved the sentence as adjudged. However, the Promulgating Order erroneously states that the sentence included forfeiture of all pay and allowances. We will order a correction.

**United States v. Matthew J. WESTVEER, No. 1305 (C.G.Ct.Crim.App. 2009)**

Before this Court, Appellant has assigned as error that Appellant's pleas are improvident because the Military Judge failed to explain the defense of lack of mental responsibility after evidence presented on sentencing indicated that Appellant may not have been able to control his actions or did not appreciate the wrongfulness of his conduct. We reject the assigned error, as we see nothing whatsoever in the record to suggest that Appellant had a severe mental disease or defect or that he was unable to appreciate the nature and quality or the wrongfulness of his acts, which are the elements of the defense of lack of mental responsibility. Rule for Courts-Martial (R.C.M.) 916(k)(1), Manual for Courts-Martial, United States (2008 ed.). *See also* R.C.M. 706.

**Decision**

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. A supplemental promulgating order shall be issued to correct the error in the statement of the sentence.

For the Court,

Gail M. Reese  
Deputy Clerk of the Court