

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

UNITED STATES

v.

Nicholas J. AMOROSO
Information System Technician Third Class (E-4), U.S. Coast Guard

CGCMG 0251

Docket No. 1313

8 December 2009

General court-martial convened by Commander, Maintenance and Logistics Command Atlantic.
Tried at Norfolk, Virginia on 27 May 2008.

Military Judge:	CAPT Brian M. Judge, USCG
Trial Counsel:	LT Jeffery S. Howard, USCG
Assistant Trial Counsel:	LT Janine E. Donovan, USCG
Defense Counsel:	LT Eric S. Nelson, JAGC, USN
Assistant Defense Counsel:	LT Theresa Mainuli, JAGC, USN
Appellate Defense Counsel:	CDR Necia L. Chambliss, USCGR
Appellate Government Counsel:	LCDR Brian K. Koshulsky, USCG
Appellate Government Counsel:	LT Emily P. Reuter, USCG

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 one specification of attempting to furnish alcohol to a minor and three specifications of attempting to communicate indecent language to a minor, all in violation of Article 80, Uniform Code of Military Justice (UCMJ). The military judge sentenced Appellant to confinement for ten months, reduction to E-1, forfeiture of all pay and allowances, and a bad-conduct discharge. The

United States v. Nicholas J. AMOROSO, No. 1313 (C.G.Ct.Crim.App. 2009)

Convening Authority approved the sentence as adjudged and suspended confinement in excess of six months for six months, pursuant to the pretrial agreement.

Before this court, Appellant has assigned two errors: (1) the omission of the military judge's ruling on defense motions renders the record of the trial incomplete; and (2) the Court should consider the Naval Brig's incorrect information on multiple DD Forms 2791 in determining the appropriate sentence to affirm.

The first assigned error, concerning the omission of the military judge's ruling, has been corrected. This Court has granted, without Appellant's objection, the Government's Motion to Attach an affidavit of the military judge, accompanied by his Opinion and Order that he had issued on 1 April 2008. The affidavit indicates that the Opinion and Order were inadvertently omitted from the record of trial.

A record of trial may be corrected during appellate review, and a Certificate of Correction is not the exclusive means of doing so. *United States v. Roberts*, 7 USCMA 322, 22 C.M.R. 112, 115 (1956); *see United States v. Mosley*, 35 M.J. 693, 695 (N.M.C.M.R. 1992). It appears that there is no issue of fact concerning the materials that were the subject of the Government's Motion to Attach Affidavit. These materials complete the record of trial and moot the issue.

The second assigned error, regarding incorrect DD Forms 2791, has also been corrected. DD Form 2791, Notice of Release/Acknowledgment of Convicted Sex Offender Registration Requirements, is used by military confinement facilities to provide information to State and local agencies concerning convictions of sexual offenses, as required by Federal law. The Government concedes in its Answer and Brief that the DD Forms 2791 originally provided to State and local agencies concerning Appellant's convictions were inaccurate. The Government avers that corrected forms were prepared in consultation with Appellant's appellate defense counsel, and that they were sent to all entities that received the original forms. This Court has granted the Government's Motion to Attach copies of the corrected forms.

United States v. Nicholas J. AMOROSO, No. 1313 (C.G.Ct.Crim.App. 2009)

There is no indication that Appellant has suffered any prejudice from distribution of the original inaccurate forms. We see no reason to reduce Appellant's sentence on account of the mistake that has been corrected.

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.



For the Court,

Amber K. Riffe
Clerk of the Court