

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

**Before
F.D. MITCHELL, R.E. BEAL, M. MCALEVY
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**JUSTIN C. CHANDLER
PRIVATE (E-1), U.S. MARINE CORPS**

**NMCCA 201000404
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 7 May 2010.

Military Judge: CAPT Paul Gamble, JAGC, USN.

Convening Authority: Commanding Officer, Headquarters and Service Battalion, Marine Corps Base, Quantico, VA.

Staff Judge Advocate's Recommendation: Col S.C. Newman, USMC.

For Appellant: CAPT Diane Karr, JAGC, USN.

For Appellee: Mr. Brian Keller, Esq.

16 November 2010

OPINION OF THE COURT

**IN ACCORDANCE WITH RULE 18.2, NMCCA RULES OF PRACTICE AND PROCEDURE, THIS
OPINION DOES NOT SERVE AS PRECEDENT.**

PER CURIAM:

A military judge sitting as a special court-martial convicted the appellant, consistent with his plea, of one specification of wrongful use of marijuana in violation of Article 112a, Uniform Code of Military Justice, 10 U.S.C. § 912a. The appellant was sentenced to confinement for six months, a forfeiture of \$955.15 pay per month for six months, and a bad-conduct discharge. The convening authority approved the sentence as adjudged.

Although not assigned as error, we note that the convening authority's action approved the sentence, which included a bad-

conduct discharge, and then stated, "In accordance with the UCMJ, Rules of [sic] Courts-Martial, applicable regulations, the pretrial agreement, and this action, the sentence is ordered executed." Under Article 71(c)(1), UCMJ, a punitive discharge cannot be ordered executed until, after the completion of direct appellate review, there is a final judgment as to the legality of the proceedings. Thus, 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).

Additionally, the military judge failed to comply with RULE FOR COURTS-MARTIAL 1003 (b)(2), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.) when he failed to state the adjudged forfeitures "in whole dollars." The convening authority failed to correct this error in his action.

Except as noted above, we conclude that the findings and sentence are correct in law and fact and that no error was committed that was materially prejudicial to the substantial rights of the appellant. Arts. 59(a) and 66(c), UCMJ. Accordingly, we affirm the findings and so much of the sentence as provides for a bad-conduct discharge, six months confinement, and forfeiture of \$955.00 pay per month for six months.

For the Court

R.H. TROIDL
Clerk of Court