

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

**Before
L.T. BOOKER, E.C. PRICE, M. FLYNN
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**JOSHUA B. CORDOVA
AVIATION WARFARE SYSTEMS OPERATOR SECOND CLASS (E-5),
U.S. NAVY**

**NMCCA 201000028
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 29 September 2009.

Military Judge: CDR Bethany Payton-O'Brien, JAGC, USN.

Convening Authority: Commander, Naval Special Warfare Group ONE, San Diego, CA.

Staff Judge Advocate's Recommendation: LT J. Choi, JAGC, USN.

For Appellant: CAPT Paul Jones, JAGC, USN.

For Appellee: Mr. Brian Keller, Esq.

27 July 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:

After careful consideration of the record, submitted without assignment of error, we affirm the findings and sentence as approved by the convening authority. Art. 66(c), Uniform Code of Military Justice, 10 U.S.C. § 866(c). The convening authority approved the sentence, which included a bad-conduct discharge, and then stated the sentence, "will be executed." Convening Authority's Action and Order of 6 Jan 2010 at 3. Under Article 71(c)(1), UCMJ, a punitive discharge cannot be ordered executed until after completion of direct appellate review, and there is a final judgment as to the legality of the proceedings. Thus, that

portion of the convening authority's action and the court-martial promulgating order that purports to execute the punitive discharge is a nullity. See *United States v. Bailey*, 68 M.J. 409 (C.A.A.F. 2009); RULE FOR COURTS-MARTIAL 1113(c)(1)(B), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.).

For the Court

R.H. TROIDL
Clerk of Court