

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

**Before
C.L. REISMEIER, F.D. MITCHELL, R.E. BEAL
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**MICHAEL C. DIPAOLO
CULINARY SPECIALIST THIRD CLASS (E-4), U.S. NAVY**

**NMCCA 200602442
GENERAL COURT-MARTIAL**

Sentence Adjudged: 5 November 2009.
Military Judge: CDR Douglas Barber, JAGC, USN.
Convening Authority: Commander, Submarine Group Two, Naval
Submarine Base New London, Groton, CT.
Staff Judge Advocate's Recommendation: LT P.S. Reutlinger,
JAGC, USN.
For Appellant: Maj Kirk Sripinyo, USMC.
For Appellee: Mr. Brian Keller, Esq.

19 August 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:

This case is before this court a second time for review. On 10 March 2006, a general court martial consisting of officer members convicted the appellant, contrary to his pleas, of making a false official statement and two specifications of indecent assault, in violation of Articles 107 and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 907 and 934. The appellant was sentenced to a dishonorable discharge, reduction to pay grade E-1, forfeiture of all pay and allowances, and confinement for 42 months. The convening authority approved the sentence as adjudged. On 16 October 2007, this court affirmed the lower court's decision. See *United States v. Dipaola*, No. 200602442,

2007 CCA LEXIS 426, unpublished op. (N.M.Ct.Crim.App. 16 Oct 2007).

On 18 December 2008, the Court of Appeals for the Armed Forces (CAAF) reversed that portion of our decision which affirmed Specification 2 of Charge II and the sentence, and returned the record to the Judge Advocate General of the Navy for remand to the convening authority for a rehearing on findings on that specification and/or sentencing. The CAAF affirmed the remainder of this court's decision. *United States v. Dipaola*, 67 M.J. 98 (C.A.A.F. 2008).

On 5 November 2009, a rehearing was held on Specification 2 of Charge II. A military judge, sitting as a general court martial, pursuant to the pleas of the appellant, found him not guilty of the Article 134 indecent assault charge, but guilty of the lesser included offense, assaulted consummated by a battery, in violation of Article 128, Uniform Code of Military Justice, 10 U.S.C. § 928. On resentencing, the appellant was awarded three years confinement, reduction to pay grade E-1, and a dishonorable discharge. With the exception of the dishonorable discharge, which was commuted to a bad-conduct discharge in accordance with the terms of the pretrial agreement, the sentence was approved by the convening authority as adjudged.

We have carefully reviewed the record, submitted without any additional assignments of error, and conclude that the findings and sentence are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant remains. Arts. 59(a) and 66(c), UCMJ.

Accordingly, we affirm the findings of guilty and the sentence as approved by the convening authority.

For the Court

R.H. TROIDL
Clerk of Court