

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

**Before
L.T. BOOKER, E.C. PRICE, J.R. PERLAK
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**DELANO V. HOLMES
LANCE CORPORAL (E-3), U.S. MARINE CORPS**

**NMCCA 200800501
GENERAL COURT-MARTIAL**

Sentence Adjudged: 14 December 2007.

Military Judge: LtCol Jeffrey Meeks, USMC.

Convening Authority: Commander, I Marine Expeditionary Force, U.S. Marine Corps Forces, Pacific, Camp Pendleton, CA.

Staff Judge Advocate's Recommendation: Col J.R. Ewers, Jr., USMC.

For Appellant: LT Heather Cassidy, JAGC, USN; LT Michael Maffei, JAGC, USN.

For Appellee: Capt Mark Balfantz, USMC.

27 April 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 us for a second time. In our initial decision, *United States v. Holmes*, No. 200800501, 2009 CCA LEXIS 354, unpublished op. (N.M.Ct.Crim.App. 8 Oct 2009), we affirmed the finding of guilty of false official statement, and set aside the finding of guilty of negligent homicide, in violation respectively of Articles 107 and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 907 and 934. We also set aside the sentence.

We authorized a rehearing on the charge of negligent homicide or, if the convening authority (CA) determined that a rehearing on that charge was impracticable, authorized the CA to dismiss that charge, and then order a rehearing on sentence only. If the CA further determined a rehearing on sentence only impracticable, we authorized the CA to approve a sentence of no punishment.

By action of 29 December 2009, the CA approved a sentence of no punishment, after finding rehearings on the charge of negligent homicide and sentence impracticable. No further errors remaining or being raised, we conclude that the findings and the 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.

We affirm the findings and sentence, as approved by the convening authority.

For the Court

R.H. TROIDL
Clerk of Court