

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

**Before  
C.L. REISMEIER, F.D. MITCHELL, D.O. VOLLENWEIDER  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**ANDREW J. LARSON  
PRIVATE FIRST CLASS (E-2), U.S. MARINE CORPS**

**NMCCA 201000204  
SPECIAL COURT-MARTIAL**

**Sentence Adjudged:** 12 November 2009.

**Military Judge:** CDR Douglas Barber, 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:** LCDR Matthew Schelp, JAGC, USN.

**For Appellee:** Mr. Brian Keller, Esq.

**12 August 2010**

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**OPINION OF THE COURT**  
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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). We note that the convening authority approved the sentence, which included a bad-conduct discharge, and then stated, "In accordance with the UCMJ, Rules [for] 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 judgement 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 that does not require correction. *United States v Bailey*, 68 M.J. 409 (C.A.A.F. 2009).

For the Court

R.H. TROIDL  
Clerk of Court