

**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.

**AUGUST D. MANSFIELD
CORPORAL (E-4), U.S. MARINE CORPS**

**NMCCA 201000441
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 17 May 2010.

Military Judge: Maj Stephen Keane, USMC.

Convening Authority: Commanding Officer, Marine Light
Attack Helicopter Squadron 267, Marine Aircraft Group 39,
Camp Pendleton, CA.

Staff Judge Advocate's Recommendation: Col K.J. Brubaker,
USMC.

For Appellant: CAPT Bill Pinamont, JAGC, USN.

For Appellee: Mr. Brian Keller, Esq.

23 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 unauthorized absence, and three specifications of wrongful use of methamphetamine,¹ in violation of Articles 86 and 112a, Uniform

¹ We note that the military judge neglected to advise the appellant of the elements of Specification 2 of Charge I (the Article 112a, UCMJ, offense appears as Charge I on the Charge Sheet). The military judge did, however, advise the appellant of the elements of Charge I, Specification 1, which were the same, except for the dates of the use. The appellant asserts no prejudice from this omission and we find it to be harmless error.

Code of Military Justice, 10 U.S.C. §§ 886 and 912a. The appellant was sentenced to confinement for 100 days, reduction to pay grade E-1, forfeiture of \$900.00 pay per month for three months, and a bad-conduct discharge. The convening authority approved the sentence as adjudged.²

Although not assigned as error, we note that the convening authority approved the sentence, which included a bad-conduct discharge, and then stated, "In accordance with the Uniform Code of Military Justice, the Manual for Courts-Martial, applicable regulations, 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).

We therefore 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 the sentence.

For the Court

R.H. TROIDL
Clerk of Court

² The appellant agreed to plead guilty in exchange for a pretrial agreement which limited confinement to time served (appellant served 52 days in pretrial confinement). Prior to the convening authority taking action on his case, the appellant committed further misconduct. After affording the appellant his rights under RULE FOR COURTS-MARTIAL 1109, MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.), the convening authority withdrew from the sentencing limitation portion of the pretrial agreement.