

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

**Before
J.K. CARBERRY, E.C. PRICE, P.H. MCCONNELL
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**ALYSSA N. MONTEZ
PRIVATE FIRST CLASS (E-2), U.S. MARINE CORPS**

**NMCCA 201000358
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 12 April 2010.

Military Judge: Col Daniel Daugherty, USMC.

Convening Authority: Commanding Officer, Marine Corps
Combat Service Support Schools, Training Command, Camp
Lejeune, NC.

Staff Judge Advocate's Recommendation: LtCol J.L. Gruter,
USMC.

For Appellant: Capt Peter Griesch, USMCR.

For Appellee: Mr. Brian Keller, Esq.

31 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:

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, "In accordance with the UCMJ, Rules of [sic] 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 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).

For the Court

R.H. TROIDL
Clerk of Court