

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

**Before
C.L. REISMEIER, F.D. MITCHELL, M. MCALEVY
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**DAVID ROBLES
CORPORAL (E-4), U.S. MARINE CORPS**

**NMCCA 201000424
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 15 April 2010.

Military Judge: LtCol Peter Rubin, USMC.

Convening Authority: Commanding Officer, Marine Air
Control Squadron-1 (REIN), Yuma, AZ.

Staff Judge Advocate's Recommendation: Maj B.M. Wilson,
USMC.

For Appellant: CDR Howard Liberman, JAGC, USN.

For Appellee: Mr. Brian Keller, Esq.

16 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 one specification of forcible sodomy, in violation of Article 125, Uniform Code of Military Justice, 10 U.S.C. § 925. The appellant was sentenced to confinement for eight months, reduction to pay grade E-1, and a bad-conduct discharge. The convening authority approved the sentence as adjudged.

Although not assigned as error, we note that the convening authority's action 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