

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

**Before  
F.D. MITCHELL, J.A. MAKSYM, R.E. BEAL  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**NEALON F. SMITH II  
MACHINIST'S MATE FIREMAN (E-3), U.S. NAVY**

**NMCCA 200900079  
SPECIAL COURT-MARTIAL**

**Sentence Adjudged:** 5 November 2008.

**Military Judge:** LtCol William Brown, USMCR.

**Convening Authority:** Commanding Officer, Naval Submarine Support Center New London, Naval Submarine Base New London, Groton, CT.

**Staff Judge Advocate's Recommendation:** LT P.S. Reutlinger, JAGC, USN.

**For Appellant:** LCDR Thomas Belsky, JAGC, USN.

**For Appellee:** CAPT. J.J. Bishop, JAGC, USN; CDR K.D. Hinson, JAGC, USN; Maj Elizabeth A. Harvey, USMC.

**21 September 2010**

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**OPINION OF THE COURT**  
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**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 this court a second time for review. On 5 November 2008, a military judge sitting as a special court-martial convicted the appellant, pursuant to his pleas, of aggravated assault, housebreaking, and carrying a concealed weapon, in violation of Articles 128, 130, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 907, 930, and 934. The appellant was sentenced to confinement for 90 days and a bad-conduct discharge. The convening authority approved the sentence as adjudged. On 9 March 2010, this court set aside the findings

of guilty on Charges III (aggravated assault) and IV (housebreaking), and the sentence. We authorized the convening authority to order a rehearing on the set aside charges or a rehearing on sentencing. Alternatively, the convening authority was authorized to approve a sentence of no punishment. See *United States v. Smith*, No. 200900079, 2010 CCA LEXIS 25, unpublished op. (N.M.Ct.Crim.App. 9 Mar 2010).

On 12 July 2010, the convening authority withdrew and dismissed Charges III and IV, approving only the finding of guilty to Charge V (carrying a concealed weapon) and a sentence of no punishment.

We have again carefully reviewed the record of trial submitted without any additional assignments of error and conclude that the findings and 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.

Accordingly, we affirm the findings of guilty and the sentence as approved by the convening authority.

For the Court

R.H. TROIDL  
Clerk of Court