

**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.**

**TIMOTHY M. WARNER  
SERGEANT (E-5), U.S. MARINE CORPS**

**NMCCA 200900044  
GENERAL COURT-MARTIAL**

**Sentence Adjudged:** 4 August 2010.

**Military Judge:** CDR Thomas Fichter, JAGC, USN.

**Convening Authority:** Commanding General, 4th Marine  
Division, New Orleans, LA.

**Staff Judge Advocate's Recommendation:** Maj A.N. Thomas,  
USMC; **Addendum:** Col R.G. Kelly, USMC.

**For Appellant:** Maj Jeffrey Liebenguth, USMC.

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

**28 December 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 8 August 2008, a general court martial consisting of officer and enlisted members convicted the appellant, contrary to his pleas, of attempted premeditated murder, solicitation of another to commit murder, and use of interstate commerce facilities in the commission of murder-for-hire in violation of Articles 80 and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 880 and 934. The appellant was sentenced to a dishonorable discharge, reduction to pay grade E-1, forfeiture of all pay and allowances, and confinement for five years. The convening authority approved the sentence as adjudged. On 30 April 2010, this court affirmed

the findings of guilty of the additional Charge and its two specifications, set aside the attempted murder charge and specification, set aside the sentence, and returned the record of trial to the Judge Advocate General of the Navy for remand to an appropriate convening authority with a rehearing on sentence authorized. See *United States v. Warner*, No. 200900044, 2010 CCA LEXIS 55, unpublished op. (N.M.Ct.Crim. App. 30 Apr 2010).

On 4 August 2010, a military judge sitting as a general court-martial conducted a resentencing hearing on the remaining charge and specifications. On resentencing, the appellant was awarded confinement for 42 months, reduction to pay grade E-1, a forfeiture of all pay and allowances, and a dishonorable discharge. With the exception of the dishonorable discharge, which was commuted to a bad-conduct discharge in accordance with the terms of the pretrial agreement, the sentence was approved by the convening authority as adjudged.<sup>1</sup>

We have carefully reviewed the record and the record of the resentencing hearing, 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, having previously affirmed the findings, we affirm the sentence as approved by the convening authority.

For the Court

R.H. TROIDL  
Clerk of Court

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<sup>1</sup> We note that the staff judge advocate's recommendation (SJAR) to the convening authority was to "approve the sentence as adjudged and except for the bad conduct discharge, order it executed . . ." This is in error as a dishonorable discharge was awarded at trial not a bad-conduct discharge. Additionally the SJAR recommends, and the convening authority's action reflects, that confinement in excess of four years was suspended. This is a nullity as the appellant was awarded less than four years confinement (42 months). The appellant has not alleged that he was prejudiced by these errors and we find them to be harmless.