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

Before
J.K. CARBERRY, B.L. PAYTON-O'BRIEN, M.D. MODZELEWSKI
Appellate Military Judges

UNITED STATES OF AMERICA

v.

NAPOLEON C. HERNANDEZ
SERGEANT (E-5), U.S. MARINE CORPS

NMCCA 201000427
SPECIAL COURT-MARTIAL

Sentence Adjudged: 14 April 2010.
Military Judge: Maj Robert Palmer, USMC.
Convening Authority: Commanding Officer, 4th Marine Corps District, MCRD/ERR, Parris Island, SC.
Staff Judge Advocate's Recommendation: Col J.J. Lagasca, USMC.
For Appellant: LT Michael Hanzel, JAGC, USN.
For Appellee: Capt Samuel Moore, USMC.

29 December 2011

OPINION OF THE COURT

THIS OPINION DOES NOT SERVE AS BINDING PRECEDENT, BUT MAY BE CITED AS PERSUASIE AUTHORITY UNDER NMCCA RULE OF PRACTICE AND PROCEDURE 18.2.

PER CURIAM:

By decision dated 27 January 2011, this court affirmed the findings and sentence in the appellant’s court-martial, but directed that the supplemental court-martial order reflect that Charge IV and its two specifications and Specification 1 under Additional Charge III were dismissed. The appellant subsequently petitioned the Court of Appeals for the Armed Forces (CAAF) for review and on 21 September 2011, CAAF vacated this court's decision and returned the record of trial to the Judge Advocate General for remand to this court "for

consideration of the granted issue in light of *United States v. Fosler*, 70 M.J. 225 (C.A.A.F. 2011)."

Regarding the remanded question, we again affirm the findings of guilty, pursuant to the appellant's pleas, for the reasons set for in *United States v. Hackler*, __ M.J. ___ (N.M.Ct.Crim.App. 22 Dec 2011). As to all other matters in the appellant's case, for the reasons stated in our prior opinion, we again 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 was committed. Arts. 59(a) and 66(c), UCMJ. Accordingly, we affirm the findings and the sentence as approved by the convening authority. The supplemental court-martial order shall reflect that Charge IV and its two specifications and Specification 1 under Additional Charge III were dismissed.

For the Court

R.H. TROIDL
Clerk of Court