

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

**Before
J.A. MAKSYM, J.R. PERLAK, T.R. ZIMMERMANN
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**KEITH C. GARRETT
HULL MAINTENANCE TECHNICIAN THIRD CLASS (E-4), U.S. NAVY**

**NMCCA 201100140
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 23 November 2010.

Military Judge: CAPT Carole Gaasch, JAGC, USN.

Convening Authority: Commanding Officer, Navy Recruiting
District, San Diego, CA.

For Appellant: CDR Howard Liberman, JAGC, USN.

For Appellee: Mr. Brian Keller, Esq.

13 September 2011

OPINION OF THE COURT

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

PER CURIAM:

A military judge sitting as a special court-martial convicted the appellant, pursuant to his pleas, of two specifications of violating a lawful general order, in violation of Article 92, Uniform Code of Military Justice, 10 U.S.C. § 892. The appellant was sentenced to five months confinement, reduction to pay grade E-1, and a bad-conduct discharge. The convening authority (CA) approved the sentence as adjudged, but in accordance with the pretrial agreement, suspended all confinement in excess of 30 days for the period of confinement served plus 12 months.

Although not raised on appeal, we note two errors in the record that require our attention. First, the court-martial order does not accurately reflect the results of trial. At trial, the appellant pled guilty by exceptions and substitutions to both specifications of the Charge, excepting the word "March" and substituting the word "June" in both specifications. The court-martial order did not correctly record that the appellant pled guilty by exceptions and substitutions. This error does not materially prejudice a substantial right of the appellant, but the appellant is entitled to have his official records accurately reflect the results of his court-martial. *United States v. Crumpley*, 49 M.J. 538 (N.M.Ct.Crim.App. 1998). We will order the necessary corrective action.

Furthermore, we note that the CA 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. Pursuant to Article 71 UCMJ, the punitive discharge will be executed after final judgment." 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 CA's action purported to execute the bad-conduct discharge, it was a nullity. *United States v. Tarniewicz*, ___ M.J. ___, No. 201100158, 2011 CCA LEXIS 150 (N.M.Ct.Crim.App. 30 Aug 2011).

We conclude that the approved 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, the findings and sentence, as approved by the CA, are affirmed. We direct that the supplemental court-martial order accurately summarize the offenses on which the appellant was arraigned, his pleas, and the findings.

For the Court

R.H. TROIDL
Clerk of Court