

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

**Before
J.A. MAKSYM, R.E. BEAL, R.Q. WARD
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**BRAD H. ALSTON
STAFF SERGEANT (E-6), U.S. MARINE CORPS**

**NMCCA 201100150
GENERAL COURT-MARTIAL**

Sentence Adjudged: 16 November 2010.

Military Judge: LtCol Peter Rubin, USMC.

Convening Authority: Commanding General, Third Marine Aircraft Wing, Marine Corps Air Station Miramar, San Diego, CA.

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

For Appellant: CAPT Stephen White, JAGC, USN.

For Appellee: CAPT J.J. Bishop, JAGC, USN; LCDR C.A. Poulson, JAGC, USN, LT B.J. Voce-Gardner, JAGC, USN; Capt M.V. Balfantz, USMC.

27 December 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 general court-martial convicted the appellant, pursuant to his pleas, of maltreatment, wrongful sexual contact, adultery, receipt of child pornography, and solicitation of another to commit indecent acts in violation of Articles 93, 120, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 893, 920, and 934. The appellant was sentenced to

confinement for ten years, reduction to pay grade E-1, and a dishonorable discharge. The convening authority approved the sentence as adjudged but suspended all confinement in excess of 36 months pursuant to a pretrial agreement.

The appellant's sole assigned error¹ is that pursuant to *United States v. Fosler*, 70 M.J. 225 (C.A.A.F. 2011), Specifications 1 and 4 of Charge IV (adultery and solicitation), fail to state offenses because neither specification alleges the terminal element of Article 134.² We disagree.

The appellant's case is significantly distinguishable from *Fosler* because: 1) the appellant did not challenge the adequacy of the specifications at trial; 2) he pled guilty to both specifications; 3) the military judge ensured the appellant understood the terminal elements of each offense; and 4) in both instances the appellant provided a factual basis to establish he was guilty of conduct prejudicial to good order and discipline, or of a nature to bring discredit upon the armed forces. Accordingly, we resolve the assigned error against the appellant. See *United States v. Hackler*, __ M.J. __, No. 201100323 (N.M.Ct.Crim.App. 22 Dec 2011).

After careful consideration of the record, we affirm the findings and sentence as approved by the convening authority.

For the Court

R.H. TROIDL
Clerk of Court

¹ The appellant originally assigned as error that the record of trial was incomplete because Prosecution Exhibit 7 was missing. The appellant withdrew this assigned error after we granted the Government's motion to attach PE 7 to the record.

² Raised pursuant to *United States v. Grostefon*, 12 M.J. 431, 435 (C.M.A. 1982).