

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

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

**UNITED STATES OF AMERICA**

**v.**

**CALVIN A. PRINCE II  
GUNNER'S MATE SEAMAN (E-3), U.S. NAVY**

**NMCCA 201100161  
GENERAL COURT-MARTIAL**

**Sentence Adjudged:** 2 December 2010.

**Military Judge:** CAPT David Berger, JAGC, USN.

**Convening Authority:** Commander, Navy Region Hawaii, Pearl Harbor, HI.

**Staff Judge Advocate's Recommendation:** LCDR K.A. Elkins, JAGC, USN.

**For Appellant:** Capt Bow Bottomly, USMC.

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

**27 December 2011**

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**OPINION OF THE COURT**  
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**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 three specifications of conspiracy, two specifications of failing to obey a lawful general regulation, one specification of willful damage to military property, two specifications of willful damage to the property of another, one specification of being drunk onboard ship, and one specification of wrongful receipt of property knowing it had been stolen, in violation of Articles

81, 92, 108, 109, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 881, 892, 908, 909, and 934. The appellant was sentenced to confinement for five years, reduction to pay grade E-1, total forfeitures, a fine of \$20,000.00, and a dishonorable discharge. The convening authority approved the sentence as adjudged, but suspended all confinement in excess of 20 months pursuant to a pretrial agreement.

The appellant submitted the case without specific assignment of error prior to the Court of Appeals for the Armed Forces decision in *United States v. Fosler*, 70 M.J. 225 (C.A.A.F. 2011). We note that post-*Fosler* the appellant could raise that Specification 2 of Charge VIII and the specification of the Additional Charge (drunk onboard ship and wrongful receipt of the property of another knowing it had been stolen), fail to state offenses because neither specification alleges the terminal element of Article 134. In the circumstances of this case, we disagree.

As previously discussed in *United States v. Hackler*, \_\_\_ M.J. \_\_\_ (N.M.Ct.Crim.App. 22 Dec 2011) 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, even if the error were assigned we would resolve it against the appellant.

After careful consideration of the record, we find no error materially prejudicial to the appellant's substantial rights was committed and affirm the findings and sentence as approved by the convening authority.

For the Court

R.H. TROIDL  
Clerk of Court