

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

**Before
J.K. CARBERRY, M.D. MODZELEWSKI, M. FLYNN
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**JAMES M. HILDEBRANDT
LANCE CORPORAL (E-3), U.S. MARINE CORPS**

**NMCCA 201100280
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 9 February 2011.

Military Judge: LtCol David M. Jones, USMC.

Convening Authority: Commanding Officer, Marine Wing
Support Squadron 171, Marine Corps Air Station Iwakuni,
Japan.

Staff Judge Advocate's Recommendation: Col J.R. Woodworth,
USMC.

For Appellant: CAPT Diane Karr, JAGC, USN.

For Appellee: CDR Kimberly D. Hinson, JAGC, USN; Capt Mark.
V. Balfantz, USMC.

30 August 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 one specification each of conspiracy to distribute a controlled substance and wrongful distribution of a controlled substance, in violation of Articles 81 and 112a, Uniform Code of Military

Justice, 10 U.S.C. §§ 881 and 912a. The appellant was sentenced to 180 days confinement, reduction to pay grade E-1, and a bad-conduct discharge. After approving the sentence as adjudged, the Convening Authority (CA) 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."

In the appellant's only assignment of error, he avers that the CA erred when taking action by ordering the approved sentence, including the bad-conduct discharge, executed in violation of Article 71, UCMJ. Appellant's Brief of 18 Jul 2011 at 1, 3. 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. To the extent that the CA's action purported to direct execution of a discharge, it is a nullity. *United States v. Bailey*, 68 M.J. 409 (C.A.A.F. 2009).

We are convinced that the findings and the 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. The findings and the sentence are affirmed.

For the Court

R.H. TROIDL
Clerk of Court