

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

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

**UNITED STATES OF AMERICA**

**v.**

**LARRY S. SMITH, JR.  
GUNNER'S MATE SECOND CLASS (E-5), U.S. NAVY**

**NMCCA 201100302  
GENERAL COURT-MARTIAL**

**Sentence Adjudged:** 17 March 2011.

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

**Convening Authority:** Commander, Navy Region Japan,  
Yokosuka, Japan.

**Staff Judge Advocate's Recommendation:** Commander B. Keith,  
JAGC, USN.

**For Appellant:** CDR Luis P. Leme, JAGC, USN.

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

**30 August 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 one specification each of violating a lawful general order, wrongfully receiving child pornography, and wrongfully possessing child pornography, in violation of Articles 92 and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 892 and 934. The appellant was sentenced to 11 months confinement, reduction

to pay grade E-1, forfeiture of all pay and allowances, and a dishonorable discharge. The convening authority (CA) approved the sentence as adjudged. In the same action, however, he then approved, as it relates to the discharge, only a bad-conduct discharge, in accordance with the terms of a pretrial agreement.

We note that the CA's action was ambiguous in that he first purported to approve the sentence as adjudged, which included a dishonorable discharge, but subsequently stated he was approving a bad conduct discharge. To eliminate any confusion and ensure compliance with the pretrial agreement, we take corrective action in our decretal paragraph.

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. We affirm the findings and only so much of the sentence as provides for reduction to pay grade E-1, confinement for eleven months, forfeiture of all pay and allowances, and a bad-conduct discharge.

For the Court

R.H. TROIDL  
Clerk of Court