

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

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

UNITED STATES OF AMERICA

v.

**JAMES T. PAYNE
LANCE CORPORAL (E-3), U.S. MARINE CORPS**

**NMCCA 201100313
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 7 March 2011.

Military Judge: LtCol Robert Q. Ward, USMC.

Convening Authority: Commanding Officer, Marine Attack Squadron 223, Marine Aircraft Group 14, 2d Marine Aircraft Wing, U.S. Marine Corps Forces Command, Cherry Point, NC.

Staff Judge Advocate's Recommendation: Col Stephen C. Newman, USMC.

For Appellant: LCDR Ronald Hocevar, JAGC, USN.

For Appellee: LCDR Matthew T. Schelp, JAGC, USN; Maj William C. Kirby, USMC.

25 October 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:

After careful consideration of the pleadings of the parties and the record of trial, we conclude 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. To the extent that the convening authority's action purported to execute the bad-conduct

discharge, as asserted by the appellant in his sole assignment of error, it was a nullity. *United States v. Bailey*, 69 M.J. 409 (C.A.A.F. 2009).

The court-martial order incorrectly reflects findings of not guilty to Charge II and its sole specification: they were instead withdrawn and dismissed. We find that this error did not materially prejudice any of the substantial rights of the appellant. However, the appellant is entitled to have his official records correctly reflect the results of this proceeding. *United States v. Crumpley*, 49 M.J. 538, 539 (N.M.Ct.Crim.App. 1998).

The findings and the sentence as approved by the convening authority are affirmed. The supplemental court-martial order will reflect that Charge II and the sole specification thereunder were withdrawn.

For the Court

R.H. TROIDL
Clerk of Court