

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

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

**UNITED STATES OF AMERICA**

**v.**

**EMILY G. DOBRUCK  
PRIVATE (E-1), U.S. MARINE CORPS**

**NMCCA 201100332  
SPECIAL COURT-MARTIAL**

**Sentence Adjudged:** 7 March 2011.

**Military Judge:** Col Michael B. Richardson, USMC.

**Convening Authority:** Commanding Officer, Headquarters and Support Battalion, Marine Corps Base, Camp Pendleton, CA.

**Staff Judge Advocate's Recommendation:** LtCol A.M. Ray, USMC.

**For Appellant:** CAPT Diane L. Karr, JAGC, USN.

**For Appellee:** LCDR Clayton G. Trivett, JAGC, USN; Maj William C. Kirby, USMC.

**27 September 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 special court-martial convicted the appellant, pursuant to her pleas, of one specification of wrongful use of a controlled substance, in violation of Article 112a, Uniform Code of Military Justice, 10 U.S.C. § 912a. The appellant was sentenced to 75 days confinement, forfeitures of \$978.00 pay per month for two months, 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, she 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 15 Aug 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. Tarniewicz*, \_\_ M.J. \_\_, No. 201100158, 2011 CCA LEXIS 150 (N.M.Ct.Crim.App. 30 Aug 2011).

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