

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

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

**UNITED STATES OF AMERICA**

**v.**

**NICOLAS GAVIRIACRUZ  
SERGEANT (E-5), U.S. MARINE CORPS**

**NMCCA 201100334  
SPECIAL COURT-MARTIAL**

**Sentence Adjudged:** 11 February 2011.

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

**Convening Authority:** Commanding Officer, Marine Light Attack Helicopter Squadron 367, Marine Aircraft Group 39, 3d Marine Aircraft Wing, Camp Pendleton, CA.

**Staff Judge Advocate's Recommendation:** Col Kurt J. Brubaker, USMC.

**For Appellant:** CDR Michelle M. Pettit, JAGC, USN.

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

**18 October 2011**

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**OPINION OF THE COURT**  
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After careful consideration of the record, submitted without assignment of error, we affirm the findings and sentence as approved by the convening authority. Art. 66(c), Uniform Code of Military Justice, 10 U.S.C. § 866(c).<sup>1</sup>

For the Court

R.H. TROIDL  
Clerk of Court

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<sup>1</sup> To the extent that the convening authority's action purports to direct that the punitive discharge will be executed after final judgment it is a legal nullity. See *United States v. Tarniewicz*, \_\_ M.J. \_\_, No. 201100158, 2011 CCA LEXIS 150 (N.M.Ct.Crim.App. 30 Aug 2011).