

**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.

**BENJAMIN A. BATHEN
LANCE CORPORAL (E-3), U.S. MARINE CORPS**

**NMCCA 201100347
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 5 April 2011.

Military Judge: LtCol Michael D. Mori, USMC.

Convening Authority: Commanding Officer, 3d Marine Regiment
(Rein), 3d Marine Division (-)(Rein), MCBH Kaneohe Bay, HI.

Staff Judge Advocate's Recommendation: LtCol K.J. Estes,
USMC.

For Appellant: CDR Christopher J. Geis, JAGC, USN.

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

13 October 2011

OPINION OF THE COURT

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). We note that the convening authority's action is at variance with the pretrial agreement in that it suspends all confinement in excess of 180 days for a period of 6 months from the date of the action. The supplemental court-martial order will reflect that confinement in excess of 180 days was suspended for a period of 6 months from the date of trial. *United States v. Cox*, 46 C.M.R. 69, 72 (C.M.A. 1972). Otherwise, we find that no error materially

prejudicial to the substantial rights of the appellant occurred. Articles 59(a) and 66(c), UCMJ. 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*, 68 M.J. 409 (C.A.A.F. 2009).

For the Court

R.H. TROIDL
Clerk of Court