

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

**Before
J.A. MAKSYM, R.Q. WARD, G.G. GERDING
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**RICKY L. MORRIS
QUARTERMASTER THIRD CLASS (E-4), U.S. NAVY**

**NMCCA 201100348
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 28 February 2011.

Military Judge: CAPT David Berger, JAGC, USN.

Convening Authority: Commanding Officer, USS SHILOH
(CG 67).

Staff Judge Advocate's Recommendation: LT L.E. Butler,
JAGC, USN.

For Appellant: CDR Christopher Geis, JAGC, USN.

For Appellee: Mr. Brian Keller, Esq.

8 November 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:

A military judge, sitting as a special court-martial, convicted the appellant, pursuant to his plea, of larceny, in violation of Article 121, Uniform Code of Military Justice, 10 U.S.C. § 921. On 28 February 2011, the military judge sentenced the appellant to confinement for 180 days, reduction to pay grade E-1, forfeiture of \$900.00 per month for six months, and a bad-conduct discharge. On 6 June 2011, the convening authority (CA) approved the sentence as adjudged and, pursuant to a

pretrial agreement, suspended all confinement in excess of 91 days and disapproved the adjudged forfeitures.

The record reveals the appellant and his trial defense counsel signed a waiver of appellate review on 18 May 2011. The waiver indicates the appellant "read the attached action dated 28 February 2011." However, the CA did not take action until 6 June 2011, after the appellant had signed the waiver of appellate review.¹

The CA then forwarded the record of trial to a judge advocate for review pursuant to Article 64, UCMJ, which occurred on 20 June 2011. On 22 June 2011, the general court-martial convening authority issued a supplemental court-martial order in which he ordered the bad-conduct discharge executed.

Because the appellant filed his waiver with the CA before the CA took his action, the waiver was legally invalid for failure to comply with Article 61, UCMJ, and RULE FOR COURTS-MARTIAL 1110, MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.). *United States v. Smith*, 44 M.J. 387, 391-92 (C.A.A.F. 1996).

Therefore, we set aside the supplemental court-martial order of 22 June 2011. 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, UCMJ.

For the Court

R.H. TROIDL
Clerk of Court

¹ The appellant's court-martial occurred on 28 February 2011.