

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

**Before
J.K. CARBERRY, J.R. PERLAK, J.E. STOLASZ
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**CHARLES M. BURLESON
CULINARY SPECIALIST THIRD CLASS (E-4), U.S. NAVY**

**NMCCA 200700143
GENERAL COURT-MARTIAL**

Sentence Adjudged: 26 October 2010.

Military Judge: CAPT Moira Modzelewski, JAGC, USN.

Convening Authority: Commander, Naval Air Force, U.S.
Atlantic Fleet, Norfolk, VA.

Staff Judge Advocate's Recommendation: CDR Frank Katz,
JAGC, USN.

For Appellant: Maj Jeffrey Liebenguth, USMC.

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

28 April 2011

OPINION OF THE COURT

**IN ACCORDANCE WITH RULE 18.2, NMCCA RULES OF PRACTICE AND PROCEDURE, THIS
OPINION DOES NOT SERVE AS PRECEDENT.**

PER CURIAM:

This case is before us for a second time. In our initial decision, we affirmed convictions for rape, assault, housebreaking, and indecent assault in violation of Articles 120, 128, 130, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 920, 928, 930, and 934. The appellant was sentenced to 20 years confinement, total forfeitures, reduction to pay grade E-1, and a dishonorable discharge. The convening authority (CA) approved the sentence as adjudged.

The Court of Appeals for the Armed Forces (CAAF) reversed our decision, as to Specification 1 of Charge I and as to the

sentence, holding that indecent assault is not a lesser included offense of rape.¹ CAAF affirmed the decision in all other respects. The record of trial was then returned to this court for sentence reassessment or to order a rehearing on sentence.

A rehearing on sentence was held on 26 October 2010, and the appellant was sentenced to 12 years confinement, reduction to E-1 and a dishonorable discharge. The CA approved the adjudged sentence and, pursuant to a post-trial agreement, suspended all confinement in excess of 10 years for the period of confinement served plus 12 months thereafter.

Thereafter the case was submitted without additional assignment of error. Having previously affirmed the remaining findings, we have examined the record of trial and conclude that the sentence is correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant remains. Arts. 59(a) and 66(c), UCMJ. The sentence as approved by the convening authority is affirmed.

For the Court

R.H. TROIDL
Clerk of Court

¹ *United States v. Burlison*, 69 M.J. 165 (C.A.A.F. 2010) (summary disposition) (citing *United States v. Jones*, 68 M.J. 465 (C.A.A.F. 2010)).