

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

**Before
J.A. MAKSYM, R.E. BEAL, T.R. ZIMMERMANN
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**DARREN L. HELMS, JR.
CORPORAL (E-4), U.S. MARINE CORPS**

**NMCCA 201100166
GENERAL COURT-MARTIAL**

Sentence Adjudged: 15 December 2010.

Military Judge: Maj Clay Plummer, USMC.

Convening Authority: Commanding General, 2d Marine
Division, Camp Lejeune, NC.

Staff Judge Advocate's Recommendation: LtCol J.W. Hitesman,
USMC.

For Appellant: CDR Howard Liberman, JAGC, USN.

For Appellee: Mr. Brian Keller, Esq.

28 July 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 general court-martial convicted the appellant, pursuant to his pleas, of one specification of indecent act, one specification of possessing child pornography, and one specification of communicating indecent language, violations, of Articles 120 and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 920 and 934. The military judge sentenced the appellant to 12 months confinement, reduction to pay grade E-1, and a bad-conduct discharge. The convening authority (CA) approved the sentence as adjudged.

Although not raised by counsel, we note that after first approving the sentence as adjudged, the CA stated in his action, "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 judgement." To the extent that this language purports to direct anything, it is a legal nullity. Article 71 is restrictive in its wording (a discharge "may not be" executed until after final action). It is not directive as is the language of the CA's action here ("will be executed"). The determination as to whether a discharge "will be" executed cannot be made until after judgement as to the legality of the proceedings following final appellate review or action by the secretary concerned.

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 approved sentence are affirmed.

For the Court

R.H. TROIDL
Clerk of Court