

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

**Before
L.T. BOOKER, J.K. CARBERRY, D.R. LUTZ
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**TYLER R. PAUL
PRIVATE FIRST CLASS (E-2), U.S. MARINE CORPS**

**NMCCA 201100021
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 15 September 2010.

Military Judge: Col Michael B. Richardson, USMC.

Convening Authority: Commanding Officer, Marine Aviation
Logistics Squadron 16, 3d Marine Aircraft Wing, MCAS
Miramar, San Diego, CA.

Staff Judge Advocate's Recommendation: Maj Brett M. Wilson,
USMC.

For Appellant: LCDR Edward Hartman, JAGC, USN.

For Appellee: LCDR Craig A. Poulson, JAGC, USN; Capt Mark
V. Balfantz, USMC.

10 May 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:

A military judge sitting as a special court-martial convicted the appellant, pursuant to his pleas, of one specification of failure to go, one specification of unauthorized absence terminated by apprehension, and one specification of making a false official statement, violations, respectively, of Articles 86 and 107, Uniform Code of Military Justice, 10 U.S.C. §§ 886 and 907. The appellant was sentenced to 100 days confinement, reduction to pay grade E-1, forfeiture of \$964.00

pay per month for four months, and a bad-conduct discharge. The convening authority (CA) approved the sentence as adjudged.

In the appellant's only assignment of error, he asserts that the CA erred in taking his action when he ordered the approved sentence, including the bad-conduct discharge, executed.

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 judgment." 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 judgment 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