

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

**Before
L.T. BOOKER, J.K. CARBERRY, E.C. PRICE
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**KOREY L. PETERSON
PRIVATE (E-1), U.S. MARINE CORPS**

**NMCCA 200900688
GENERAL COURT-MARTIAL**

Sentence Adjudged: 23 November 2010.

Military Judge: LtCol P.S. Rubin, USMC.

Convening Authority: Commanding General, Marine Air Ground Task Force Training Command, Marine Corps Air Ground Combat Center, Twentynine Palms, CA.

Staff Judge Advocate's Recommendation: LtCol A.G. Peterson, USMC.

For Appellant: LT Daniel Napier, JAGC, USN.

For Appellee: Mr. Brian Keller, Esq.

22 February 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, the court *en banc* set aside guilty findings and dismissed two specifications regarding violations of Article 120, Uniform Code of Military Justice, 10 U.S.C. § 920. We affirmed convictions for an orders violation and for drug distribution, violations respectively of Articles 92 and 112a, UCMJ. We set aside the sentence and authorized a sentence rehearing, with instructions to return the record to us on completion of those proceedings. See *Boudreaux v. United States Navy-Marine Corps Court of Military Review*, 28 M.J. 181 (C.M.A. 1989). The

appellant entered into a presentencing agreement with the convening authority (CA) that provided for approval of all adjudged punishments subject to suspension of confinement in excess of time served. By the time the appellant was re-sentenced, he had amassed a total of 882 days of credit against his sentence of confinement.

The military judge sentenced the appellant to confinement for 13 months and to a bad-conduct discharge after thoroughly explaining, and determining the appellant's understanding of, the effect of Article 63 on the proceedings and the limitations that that article placed on the CA's discretion. The CA then approved the adjudged sentence and ordered that a suspension of confinement in excess of time served run for 12 months after the date the sentence was announced. This portion of the action was a legal nullity, see generally *United States v. Lamb*, 22 M.J. 518, 519 (N.M.C.M.R. 1985), and no action is needed to correct that nullity.

After careful consideration of the record, submitted without additional assignment of error, and the court having previously affirmed the findings of guilty as to Charge II and its specification and Additional Charge I and its specification, we affirm the sentence as approved by the convening authority. Arts. 59(a) and 66(c), UCMJ.

For the Court

R.H. TROIDL
Clerk of Court