

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

**Before
C.L. REISMEIER, F.D. MITCHELL, R.E. BEAL
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**JOHN A. STEWART IV
CORPORAL (E-4), U.S. MARINE CORPS**

**NMCCA 201100028
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 15 October 2010.

Military Judge: Col Daniel Daugherty, USMC.

Convening Authority: Commanding Officer, Marine Transport Squadron One, Marine Corps Air Station, Cherry Point, NC.

Staff Judge Advocate's Recommendation: LtCol K.S. Woodard, USMC.

For Appellant: CDR Michelle Pettit, JAGC, USN.

For Appellee: Capt Mark 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 each of violating a lawful general order and assault, in violation of Articles 92 and 128, Uniform Code of Military Justice, 10 U.S.C. §§ 892 and 928. The appellant was sentenced to five months confinement, reduction to pay grade E-1, and a bad-conduct discharge. The convening authority approved the sentence as adjudged but suspended confinement in excess of three months in accordance with the terms of the pretrial agreement.

The appellant's sole assignment of error avers that the convening authority's action purports to execute the bad-conduct discharge. We have carefully reviewed the record of trial, the appellant's assignment of error, and the Government's response. We conclude 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.

Errors in the Convening Authority's Action

In the appellant's sole assignment of error, he asserts the convening authority's action fails to comply with RULE FOR COURTS-MARTIAL 1113(c)(1), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.) as it purports to order executed the bad-conduct discharge. After first approving the sentence as adjudged, the convening authority stated, "In accordance with the UCMJ, the Manual for Courts-Martial, applicable regulations, the pretrial agreement, and this action, the sentence is ordered executed." Under Article 71(c)(1), UCMJ, a punitive discharge cannot be ordered executed until, after the completion of direct appellate review, there is a final judgment as to the legality of the proceedings. Thus, to the extent that the convening authority's action purported to execute the bad-conduct discharge, it was a nullity. *United States v. Bailey*, 68 M.J. 409 (C.A.A.F. 2009). Thus, no remedial action is required.

Accordingly, we affirm the findings of guilty and the sentence as approved by the convening authority.

For the Court

R.H. TROIDL
Clerk of Court