

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

**Before
B.L. PAYTON-O'BRIEN, J.R. MCFARLANE, M. MCALEVY
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**LARRY J. WEYENBERG, JR.
AVIATION STRUCTURAL MECHANIC AIRMAN
APPRENTICE (E-2), U.S. NAVY**

**NMCCA 201200291
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 14 March 2012.

Military Judge: CAPT Carole Gaasch, JAGC, USN.

Convening Authority: Commander, Strike Fighter Wing, U.S. Pacific Fleet, NAS Lemoore, CA.

Staff Judge Advocate's Recommendation: LT D.A. Christenson, JAGC, USN.

For Appellant: CDR Howard Liberman, JAGC, USN.

For Appellee: Mr. Brian Keller, Esq.

31 October 2012

OPINION OF THE COURT

After careful consideration of the record, submitted without assignment of error, we affirm the findings and sentence as approved by the convening authority. Art. 66(c), Uniform Code of Military Justice, 10 U.S.C. § 866(c).¹ The supplemental court-martial order will reflect that as to Charge III and Specification 2 thereunder: (1) the appellant pled not guilty to a violation of Article 120, UCMJ, but guilty to the lesser included offense of assault consummated by a battery in violation of Article 128, UCMJ; (2) that the Government withdrew and dismissed the greater offense to which the appellant had

¹ To the extent that the convening authority's action purports to direct that the punitive discharge will be executed after final judgment it is a legal nullity. See *United States v. Tarniewicz*, 70 M.J. 543 (N.M.Ct.Crim.App. 2011).

pled not guilty; and (3) that the appellant was found guilty of the lesser included offense of assault consummated by a battery in violation of Article 128, UCMJ.

For the Court

R.H. TROIDL
Clerk of Court