

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

**Before
J.A. MAKSYM, J.R. PERLAK, B.L. PAYTON-O'BRIEN
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**DAMIEN J. AUTRY
CULINARY SPECIALIST SECOND CLASS (E-5), U.S. NAVY**

**NMCCA 201100105
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 7 December 2010.

Military Judge: CAPT Tierney Carlos, JAGC, USN.

Convening Authority: Commanding Officer, U.S. Naval Support Activity, Manama, Bahrain.

Staff Judge Advocate's Recommendation: LCDR Brian P. Powers, JAGC, USN.

For Appellant: Capt Michael D. Berry, USMC.

For Appellee: Capt Robert E. Eckert, Jr., USMC.

24 January 2012

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:

By decision dated 17 May 2011, this court affirmed the findings and sentence in the appellant's court-martial, but directed that the supplemental court-martial order reflect a not guilty finding for Charge I and its sole specification and for Specifications 3, 9, 10, and 13 of Charge II. We also affirmed a sentence of confinement for 10 months, forfeiture of \$964.00 pay per month for 10 months, reduction to pay-grade E-1, and a bad-conduct discharge. The appellant subsequently petitioned

the Court of Appeals for the Armed Forces for review and on 21 September 2011 that court vacated this Court's decision and returned the record of trial to the Judge Advocate General for remand to this Court "for consideration of the granted issue in light of *United States v. Fosler*, 70 M.J. 225 (C.A.A.F. 2011)."

Regarding the remanded question, we again affirm the findings of guilty, pursuant to the appellant's pleas, for the reasons set forth in *United States v. Hackler*, ___ M.J. ___, No. 201100323, 2011 CCA LEXIS 371 (N.M.Ct.Crim.App. 22 Dec 2011). After taking our corrective action, we again conclude that the findings and sentence are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant remains. Arts. 59(a) and 66(c), UCMJ. Accordingly, we affirm the findings of guilty to Charge II and Specifications 1, 2, 4, 5, 6, 7, 8, 11, and 12 thereunder and a sentence of confinement for 10 months, forfeiture of \$964.00 pay per month for 10 months, reduction to pay-grade E-1, and a bad-conduct discharge. The supplemental court-martial order shall reflect a not guilty finding for Charge I and its sole specification and for Specifications 3, 9, 10, and 13 of Charge II.

For the Court

R.H. TROIDL
Clerk of Court