

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

**Before  
J.R. PERLAK, M.D. MODZELEWSKI, C.K. JOYCE  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**DUSTIN D. KISH  
STAFF SERGEANT (E-6), U.S. MARINE CORPS**

**NMCCA 201100404  
SPECIAL COURT-MARTIAL**

**Sentence Adjudged:** 6 June 2012.

**Military Judge:** LtCol Robert G. Palmer, USMC.

**Convening Authority:** Commanding Officer, First Marine Corps  
District, Eastern Recruiting Region, Garden City, NY.

**Staff Judge Advocate's Recommendation:** Col E.R. Kleis,  
USMC.

**For Appellant:** LT Ryan C. Mattina, JAGC, USN.

**For Appellee:** Mr. Brian K. Keller, Esq.

**31 August 2012**

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**OPINION OF THE COURT**  
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**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:

This case is before us for a second time. In our initial decision, *United States v. Kish*, No. 201100404, unpublished op. (N.M.Ct.Crim.App. 29 Mar 2012) (per curiam), we set aside the finding of guilty as to Specification 1 of the charge, dismissed that specification, and affirmed the remaining findings of guilty. We also set aside the sentence and authorized a rehearing. At that rehearing, the military judge sentenced the

appellant to four months of confinement, reduction to pay grade E-1, and a bad-conduct discharge. Pursuant to an agreement entered into upon remand of the case, the convening authority approved the adjudged sentence, but suspended the bad-conduct discharge, to be remitted in twelve months unless sooner vacated.

Having previously affirmed the findings, except as noted above, and no new errors having been assigned, the sentence as approved by the convening authority is affirmed.

For the Court

R.H. TROIDL  
Clerk of Court