

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

**Before
J.A. MAKSYM, J.R. PERLAK, D.R. LUTZ
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**CHRISTOPHER S. WALLACE
LANCE CORPORAL (E-3), U.S. MARINE CORPS**

**NMCCA 201100100
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 30 November 2010.

Military Judge: LtCol Gregory Simmons, USMC.

Convening Authority: Commanding Officer, 3d Assault Amphibian Battalion, Marine Corps Base, Camp Pendleton, CA.

Staff Judge Advocate's Recommendation: Col D.K. Margolin, USMC.

For Appellant: CDR Luis Leme, JAGC, USN.

For Appellee: Mr. Brian Keller, Esq.

23 June 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 of failure to obey a general order and one specification of wrongful use of cocaine, in violation of Articles 92 and 112a, Uniform Code of Military Justice, 10 U.S.C. §§ 892 and 912a. The appellant was sentenced to 45 days confinement, reduction to pay grade E-1, and a bad-conduct discharge. The convening authority (CA) approved the sentence as

adjudged, but suspended the adjudged confinement in excess of 30 days pursuant to a pretrial agreement.¹

No assignment of error was raised. However, after approving the sentence as adjudged, the CA stated in his action, "In accordance with the Uniform Code of Military Justice, the Manual for Courts-Martial, applicable regulations, and this action, the sentence is ordered executed. Pursuant to Article 71, UCMJ, the punitive discharge will be executed after final judgment." To the extent that this language purports to direct anything, it is a legal nullity. Article 71 is permissive in its wording (a discharge "may not be" executed until after final action). It is not directive as is the language of the CA's action here ("will be executed"). The determination as to whether a discharge "will be" executed cannot be made until after judgment as to the legality of the proceedings following final appellate review or action by the Secretary concerned. If reference to execution after finality is desired, the better practice would be to mirror the language of the statute (although that construct would add nothing legally to the action), or to follow the recommended forms for action in Appendix 16 of the Manual for Courts-Martial.

We are convinced 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. The findings and the sentence are affirmed.

For the Court

R.H. TROIDL
Clerk of Court

¹ We note that the suspension period had expired prior to the CA taking action.