

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

**Before  
J.A. MAKSYM, R.E. BEAL, R.Q. WARD  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**BENIA N. O'NEAL  
SEAMAN (E-3), U.S. NAVY**

**NMCCA 201100307  
SPECIAL COURT-MARTIAL**

**Sentence Adjudged:** 23 March 2011.

**Military Judge:** CDR Douglas Barber, JAGC, USN.

**Convening Authority:** Commanding Officer, USS DWIGHT D.  
EISENHOWER (CVN 69).

**Staff Judge Advocate's Recommendation:** LCDR K.B. Lofland,  
JAGC, USN.

**For Appellant:** LT Toren Mushovic, JAGC, USN.

**For Appellee:** Maj Paul Ervasti, USMC.

**19 January 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:

A military judge sitting as a special court-martial convicted the appellant, pursuant to his pleas, of attempted distribution of methylenedioxymethamphetamine, escape from custody, and wrongful use of marijuana, in violation of Articles 80, 95, and 112a, Uniform Code of Military Justice, 10 U.S.C. §§ 880, 895, and 912a. The military judge also convicted the appellant, contrary to his pleas, of two specifications alleging assault. The military judge sentenced the appellant to

reduction to pay grade E-1, confinement for 11 months, and a bad-conduct discharge. The CA's action states, "In the case of Seaman Benia N. O'Neal, U.S. Navy ... the sentence is approved and, except for that part of the sentence extending to a bad conduct discharge, and except for two months of the adjudged sentence to confinement. Confinement for a period for nine months and the reduction in rank will be executed." We deem the convening authority's action to be ambiguous because the first sentence of the action is an incomplete sentence which makes it unclear what portion(s) of the sentence is approved, suspended, or ordered executed. Accordingly, we shall set aside the convening authority's action and order corrective action in our decretal paragraph.

The convening authority's action dated 3 June 2011 is set aside. The record is returned to the Judge Advocate General of the Navy for submission to an appropriate convening authority for proper post-trial processing in accordance with RULE FOR COURTS-MARTIAL 1107, MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.). Upon completion of post-trial processing the record will be returned to this court for completion of appellate review. *Boudreaux v. Navy-Marine Corps Court of Military Review*, 28 M.J. 181 (C.M.A. 1989).

For the Court

R.H. TROIDL  
Clerk of Court