

This opinion is subject to administrative correction before final disposition.

United States Navy-Marine Corps Court of Criminal Appeals

UNITED STATES

Appellee

v.

Christopher D. DOVE

Private First Class (E-2), U.S. Marine Corps

Appellant

No. 201900045

Appeal from the United States Navy-Marine Corps Trial Judiciary.

Decided: 30 April 2019.

Military Judge:

Major J. L. Ferriter, USMC.

Sentence adjudged 8 November 2018 by a special court-martial convened at Marine Corps Air Ground Combat Center, Twentynine Palms, California, consisting of a military judge sitting alone. Sentence approved by convening authority: reduction to E-1, 93 days' confinement, and a bad-conduct discharge.¹

For Appellant:

Commander Mark Takla, JAGC, USN.

For Appellee:

Mr. Brian Keller, Esq.

**This opinion does not serve as binding precedent, but
may be cited as persuasive authority under
NMCCA Rule of Appellate Procedure 30.2.**

¹ The Court-Martial Order appears to disapprove the punitive discharge.

Before HUTCHISON, TANG, and KOVACS,
Appellate Military Judges.

PER CURIAM:

Following his guilty plea, the appellant was convicted of distributing, on divers occasions, Lysergic Acid Diethylamide, a controlled substance, in violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 912a. Although not raised by the appellant, we note that the convening authority's (CA) action purports to disapprove the adjudge punitive discharge. Specifically, the CA's action states: "the sentence as adjudged is approved, *except for the punitive discharge.*"² Whether merely a scrivener's error, unartful draftsmanship, or intentional design, the CA was without authority to disapprove the bad conduct discharge. A CA "may not disapprove, commute, or suspend in whole or in part an adjudged sentence of . . . dismissal, dishonorable discharge, or bad conduct discharge" unless certain conditions not present here exist.³ Consequently, that "portion of the CA's action purporting to disapprove the bad-conduct discharge, having no basis or justification in law, was a nullity." *United States v. Kruse*, 75 M.J. 917, 921 (N-M. Ct. Crim. App. 2016).

After careful consideration of the record, we have determined that the approved findings and sentence, as noted above, are correct in law and fact and that no error materially prejudicial to appellant's substantial rights occurred. Arts. 59 and 66, UCMJ. Accordingly, the findings and sentence to 93 days' confinement, reduction to paygrade E-1, and a bad-conduct discharge are **AFFIRMED**. The supplemental court-martial order shall properly reflect that the adjudged sentence, including the bad-conduct discharge, is approved.

² CA's Action of 6 Feb 19 at 1 (emphasis added).

³ Art. 60(c)(4)(A), UCMJ, 10 U.S.C. § 860(c)(4)(A). Those conditions include instances where the accused has provided "substantial assistance . . . in the investigation or prosecution of another person" and the trial counsel has recommended that the CA disapprove, commute, or suspend any portion of the sentence, Article 60(c)(4)(b), UCMJ; or when the accused enters a pretrial agreement with the CA, the CA may "disapprove, commute, or suspend a sentence in whole or in part pursuant to the terms of the pre-trial agreement," Article 60(c)(4)(c), UCMJ.



FOR THE COURT:

A handwritten signature in blue ink that reads "Rodger A. Drew, Jr." with a stylized flourish at the end.

RODGER A. DREW, JR.
Clerk of Court