UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class SUZANNE R. ANGELES
United States Air Force

ACM S30265

4 June 2004

Sentence adjudged 10 December 2002 by SPCM convened at Sheppard Air Force Base, Texas. Military Judge: Gregory E. Pavlik.

Approved sentence: Bad-conduct discharge and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, and Captain James M. Winner.

Appellate Counsel for the United States: Colonel LeEllen Coacher and Lieutenant Colonel Lance B. Sigmon.

Before

BRESLIN, ORR, and GENT
Appellate Military Judges

OPINION OF THE COURT

GENT, Judge:

A special court-martial found the appellant guilty, in accordance with her pleas, of possession of methamphetamine and dereliction of duty on divers occasions, in violation of Articles 112a and 92, UCMJ, 10 U.S.C. §§ 912a, 892. Her adjudged and approved sentence included a bad-conduct discharge and a reduction to the grade of E-1. On appeal, the appellant asserts that her guilty plea to dereliction of duty on divers occasions was improvident. We disagree.

I. Background

The elements of willful dereliction of duty are: (1) that the accused had a certain duty; (2) that she knew of the duty; and (3) that she willfully failed to perform the duty.

Manual for Courts-Martial, United States (*MCM)*, Part IV, ¶ 16b(3) (2002 ed.). Only the first element is at issue in the case before us. The appellant alleges that her guilty plea to dereliction of duty on divers occasions was improvident because the military judge failed to elicit a factual basis to demonstrate the source of the appellant's duty to refrain from drinking while underage.

The military judge properly instructed the appellant that the first element of the offense as alleged was that she had a duty to refrain from drinking alcoholic beverages while under the age of 21. When the military judge asked the appellant to tell him why she believed she was guilty of the charged offense, the appellant stated, "I knew I had a duty not to drink alcohol because I was under 21 years of age. I am aware that 21 is the legal drinking age." She further said, "I was derelict in my duties in that I drank alcohol [on the dates and in the location charged]." Later, when the military judge said, "Okay, do you wish to agree and admit then in open court, 1) that you had a certain prescribed duty, that is, to refrain from drinking alcoholic beverages while under the legal drinking age of 21?" She replied, "Yes, sir."

II. Analysis

If an accused enters a guilty plea "improvidently or through lack of understanding" or if the accused sets up matter inconsistent with a plea of guilty, the military judge must reject the plea. Article 45(a), UCMJ, 10 U.S.C. § 845(a).

In *United States v. Bullman*, 56 M.J. 377, 380-81 (C.A.A.F. 2002), our superior court said:

> RCM 910(c), Manual for Courts-Martial, United States (2000 ed.) requires the military judge to inform the accused of the nature of the offense to which the guilty plea is offered. The rule implements *United States v. Care*, 18 USCMA 535, 541, 40 CMR 247, 253 (1969), requiring the military judge to question an accused "about what he did or did not do . . . to make clear the basis for a determination by the military trial judge . . . whether the acts or the omissions of the accused constitute the offense . . . to which he is pleading guilty." *See also United States v. Faircloth*, 45 MJ 172, 174 (1996).
>
> RCM 910(e) requires the military judge to make "such inquiry of the accused as shall satisfy the military judge that there is a factual basis for the plea." This rule implements *United States v. Davenport*, 9 MJ 364, 367 (CMA 1980), requiring that "the factual circumstances as revealed by the accused himself objectively support that plea [of guilty.]"

In *United States v. Faircloth*, 45 M.J. 172, 174 (CA.A.F. 1996), our superior court also stated, "Because Faircloth pleaded guilty, [whether the military judge properly accepted his plea] must be analyzed in terms of providence of his plea, not sufficiency of the evidence."

We have previously noted that in a *litigated* case, the government must prove the existence of a duty. *United States v. Mann*, 50 M.J. 689, 697 (A.F. Ct. Crim. App. 1999). "[T]he existence of the duty must be demonstrated in the record." *United States v. Tanksley*, 36 M.J. 428, 430 (C.M.A. 1993). There are a variety of sources from which a duty may emanate, including a treaty, statute, regulation, lawful order, standard operating procedure, or custom of the service. *MCM*, Part IV, ¶ 16c(3)(a). However, in a case where the appellant pleads guilty, there is no requirement "that any witness be called or any independent evidence be produced to establish the factual predicate for the plea." *United States v. Davenport*, 9 M.J. 364, 367 (C.M.A. 1980). The factual predicate is sufficiently established if "the factual circumstances as revealed by the accused himself objectively support that plea . . . ." *Id.*

The standard of review for determining the providence of a guilty plea is whether there is a substantial conflict raised in the record between the appellant's plea of guilty and some inconsistent statement. *See United States v. Bickley*, 50 M.J. 93, 94 (C.A.A.F. 1999). Rejecting a guilty plea "requires that the record of trial show a 'substantial basis' in law and fact for questioning [that] plea." *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991).

Whether a certain duty exists is a matter of fact. *Mann*, 50 M.J. at 697. Since the appellant admitted the fact that she had a duty to refrain from consuming alcohol, the government had no obligation to offer evidence of the source of that duty. *Davenport*, 9 M.J. at 367. The appellant consistently stated that she had a duty to refrain from drinking while under age. Therefore, we find no conflict in the record and the appellant's plea. *Bickley,* 50 M.J. at 94. We hold there is no substantial basis in law and fact for questioning the appellant's plea. *Prater*, 32 M.J. at 436.

III. Conclusion

The findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

FELECIA M. BUTLER, TSgt, USAF
Chief Court Administrator