

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class DAVID J. CARRILLO
United States Air Force**

ACM S31973

18 January 2013

Sentence adjudged 1 July 2011 by SPCM convened at Minot Air Force Base, North Dakota. Military Judge: J. Wesley Moore (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 6 months, and reduction to E-1.

Appellate Counsel for the Appellant: Captain Nathan A. White.

Appellate Counsel for the United States: Colonel Don M. Christensen; Major Roberto Ramirez; and Gerald R. Bruce, Esquire.

Before

GREGORY, HARNEY, and CHERRY
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

A special court-martial composed of military judge alone convicted the appellant in accordance with his pleas of obtaining services under false pretenses, falsely using another's personal information to apply for a bank account, unlawful entry, larceny, and attempted larceny, in violation of Articles 80, 121, and 134, UCMJ, 10 U.S.C. §§ 880, 921, 934. The court adjudged a bad-conduct discharge, confinement for six months, and reduction the lowest enlisted grade. A pretrial agreement capped confinement at eight months, and the convening authority approved the sentence as adjudged. The appellant assigns as error that the single specification of obtaining services under false pretenses and the three specifications of unlawful entry, all in violation of Article 134, UCMJ, fail to state offenses by omitting the terminal element.

Whether a charged specification states an offense is a question of law that we review de novo. *United States v. Crafter*, 64 M.J. 209, 211 (C.A.A.F. 2006) (citations omitted). “A specification states an offense if it alleges, either expressly or by [necessary] implication, every element of the offense, so as to give the accused notice and protection against double jeopardy.” *Id.* (citing *United States v. Dear*, 40 M.J. 196, 197 (C.M.A. 1994)); *see also* Rule for Courts-Martial 307(c)(3). In *Fosler*, our superior court invalidated a conviction of adultery under Article 134, UCMJ, because the military judge improperly denied a defense motion to dismiss the specification on the basis that it failed to allege the terminal element of either Clause 1 or 2. *United States v. Fosler*, 70 M.J. 225 (C.A.A.F. 2011).

While failure to allege the terminal element of an Article 134, UCMJ, offense is error, in the context of a guilty plea the error is not prejudicial where the military judge correctly advises the appellant of all the elements and the plea inquiry shows that the appellant understood to what offense and under what legal theory he was pleading guilty. *United States v. Ballan*, 71 M.J. 28, 34-36 (C.A.A.F.), *cert. denied*, 133 S. Ct. 43 (2012) (mem.). During the plea inquiry in the present case, the military judge advised the appellant of each element of the charged Article 134, UCMJ, specifications, including the terminal elements. The appellant acknowledged his understanding of the elements and explained how his misconduct violated the terminal elements. Therefore, as in *Ballan*, the appellant here suffered no prejudice to a substantial right: he knew under what clause he was pleading guilty and clearly understood how his conduct violated the terminal element of Article 134, UCMJ.

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 findings and the sentence are

AFFIRMED.

OFFICIAL



STEVEN LUCAS
Clerk of the Court