

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman ERIC R. COKER
United States Air Force

ACM 36661

26 September 2007

Sentence adjudged 03 February 2006 by GCM convened at Pope Air Force Base, North Carolina. Military Judge: Gary Jackson (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 12 months, forfeiture of all pay and allowances, reprimand, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Major John N. Page III.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, and Captain Jamie L. Mendelson.

Before

WISE, BRAND, and HEIMANN
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

In accordance with his pleas, the appellant was convicted of one specification of absence without leave, one specification of wrongful use of cocaine, one specification of wrongful appropriation over \$500.00, two specifications of writing checks with intent to defraud, and one specification of soliciting another to distribute drugs, in violation of Articles 86, 112a, 121, 123a and 134, UCMJ, 10 U.S.C. §§ 886, 912a, 921, 923a, 934. His approved sentence consists of a dishonorable discharge, confinement for 12 months, total forfeitures, reprimand, and reduction to the grade of E-1.

The appellant asserts that his plea to the specifications in violation of Article 123a, UCMJ, are improvident, and that the portion of his sentence involving a dishonorable discharge is inappropriately severe.

Background

From about 12 April 2005 until 11 May 2005, the appellant wrote 68 checks, totaling in excess of \$12,000.00 to Wal-Mart and AAFES. During this time, the appellant had two accounts with a credit union, a savings account and a checking account. His direct deposit pay went into his savings account, while his checking account had a balance of \$25.00, at the most. During the charged timeframe, one month's pay (\$1,427.40 before taxes and deductions) was deposited into the appellant's savings account. In the plea inquiry, the appellant was very clear when he told the military judge that he knew he would have insufficient funds to cover all of the checks he wrote. He explained the credit union would take money from his savings account to cover the overdraft fees¹ but would not take money out to cover the amount of the checks. He would have to manually transfer the money which he did not.

Providency of the Plea

In determining whether a guilty plea is provident, the test is whether there is a "substantial basis in law and fact for questioning the guilty plea." *United States v. Jordan*, 57 M.J. 236, 238 (C.A.A.F. 2002) (citing *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991)). In order to establish an adequate factual basis for a guilty plea, the military judge must elicit "factual circumstances as revealed by the accused himself [that] objectively support that plea[.]" *Jordan*, 57 M.J. at 238 (quoting *United States v. Davenport*, 9 M.J. 364, 367 (C.M.A. 1980)). The providency inquiry must reflect the accused understood the nature of the prohibited conduct. *United States v. Sapp*, 53 M.J. 90, 92 (C.A.A.F. 2000). A military judge must explain the elements of the offense and ensure that a factual basis for each element exists. *United States v. Barton*, 60 M.J. 62, 64 (C.A.A.F. 2004) (citing *United States v. Faircloth*, 45 M.J. 172 (C.A.A.F. 1996)). We review a military judge's decision to accept a guilty plea for an abuse of discretion. *United States v. Eberle*, 44 M.J. 374, 375 (C.A.A.F. 1996) (citing *United States v. Gallegos*, 41 M.J. 446 (C.A.A.F. 1995)).

From reviewing the record, it is clear the appellant knew his checks were going to bounce and his credit union would not cover the checks. The military judge did not abuse his discretion when he accepted this plea as provident.²

¹ Over draft fees were \$20.00 per check, totaling about \$1,360.00.

² Interesting to note in this case, the appellant pled to all charges and specifications but the military judge found his plea to one specification (in violation of Article 123a) improvident and entered a not guilty finding.

Sentence Appropriateness

In addition to his check offenses, the appellant was found guilty of a two-day AWOL, using cocaine,³ wrongfully appropriating his suitemate's laptop computer,⁴ and soliciting another airman to distribute Percocet, a Schedule II controlled substance.

We "may affirm only such findings of guilty and the sentence or such part or amount of the sentence, as [we find] correct in law and fact and determine[], on the basis of the entire record, should be approved." Article 66(c), UCMJ, 10 U.S.C. § 866(c). We assess sentence appropriateness by considering the particular appellant, the nature and seriousness of the offense, the appellant's record of service, and all matters contained in the record of trial. *United States v Snelling*, 14 M.J. 267, 268 (C.M.A. 1982).

At trial, the prosecution recommended a sentence of a dishonorable discharge, confinement for 24 months, reduction to E-1, and total forfeitures. The defense requested a bad-conduct discharge⁵ and reduction to E-1, and if necessary, no more than 12 months of confinement. The military judge sentenced the appellant to a dishonorable discharge, confinement for 12 months, a reprimand, reduction to E-1, total forfeitures, and a fine of \$9,736.00⁶ and an additional 12 months of confinement⁷ if the fine was not paid.

Conclusion

After a careful review of the record of trial, to include the appellant's post-trial submissions, we conclude the appellant's sentence, including the dishonorable discharge is not inappropriately severe, and his plea was provident. The approved 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; *United States v Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the findings and sentence are

AFFIRMED.



³ When the appellant was to meet with his commander on 15 Jun 05 to receive punishment under Article 15, UCMJ, 10 U.S.C. § 815, he was high. As a result, he was asked for and consented to a urinalysis which came back positive for cocaine.

⁴ He, in fact, took the laptop to a pawn shop, and only returned it when he was told by his unit he could not take leave until the computer was returned.

⁵ A proper and thorough inquiry was conducted.

⁶ Which both counsel argued was inappropriate in this case.

⁷ The pretrial agreement capped confinement at 18 months.