UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class MEGAN L. COOPER
United States Air Force

ACM S31727

17 August 2011

Sentence adjudged 16 September 2009 by SPCM convened at Lackland Air Force Base, Texas. Military Judge: William Burd (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 5 months, forfeiture of $933 pay per month for 6 months, and reduction to E-1.

Appellate Counsel for the Appellant: Lieutenant Colonel Gail E. Crawford; Lieutenant Colonel Darrin K. Johns; Major Shannon A. Bennett; Major Phillip T. Korman Major Grover H. Baxley; and Major Anthony D. Ortiz.

Appellate Counsel for the United States: Colonel Don M. Christensen; Lieutenant Colonel Jeremy S. Weber; Major Megan E. Middleton; and Gerald R. Bruce, Esquire.

Before

BRAND, GREGORY, and ROAN
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 her pleas of dereliction of duty, making a false official statement, larceny, and forgery, in violation of Articles 92, 107, 121, and 123, UCMJ, 10 U.S.C. §§ 892, 907, 921, 923. The court sentenced her to a bad-conduct discharge, confinement for 6 months, forfeiture of $933 pay per month for 6 months, and reduction to E-1. In accordance with a pretrial agreement, the convening authority approved 5 rather than 6 months of confinement and the remainder of the sentence as adjudged. The appellant asserts that her plea to one of the two larceny specifications is improvident because the

military judge failed to adequately inquire into a potential defense. Finding no error materially prejudicial to the substantial rights of the appellant, we affirm.

While working on a project in the dormitory briefing room with Airman Basic HD, a fellow trainee, the appellant removed $26 (a $20 note and six $1 notes) from HD's identification card holder, which she left behind when she briefly departed the room. When HD returned to the room, she saw the appellant holding her ID card holder. HD later discovered the money missing and reported the theft to her Military Training Leader who contacted Security Forces. When questioned about the theft by Security Forces personnel, the appellant denied taking the money and blamed three African American male Airmen, who she said were also in the briefing room. After a $20 note and six $1 notes were found in the appellant's dormitory wall locker during a consensual search, she confessed to stealing the money.

During the plea inquiry, the appellant told the military judge that she took $26 from HD, that she did not have permission to take the money, and that she had no intention of returning it. When asked why she took the money, the appellant replied: "Because I had lended [sic] her some money earlier, it was probably a month and a half prior, and I just felt like I wasn't getting paid back, so I just took it into my own hands." The military judge explored this with the appellant:

> MJ: Did you think you were retrieving your money when you took the $26?
>
> ACC: I was thinking that if I took that, then I'd just forget about me loaning her money earlier. But there is no – I know there is no, like, thought in my mind that what I did was right. I should have talked to her about it, I shouldn't have just taken it.
>
> MJ: So at the time that you took the $26, you knew that the money belonged to [HD] and not to you?
>
> ACC: Yes, sir.
>
> MJ: And she didn't give you permission to take the money?
>
> ACC: No, sir.

After further discussion the military judge refocused on the intent to steal:

> MJ: The way you're describing it, how is that a larceny?
>
> ACC: Because I didn't have permission to take it and she didn't know, she wasn't there. I just took it, and I didn't intend on informing her about it.

MJ: You didn't?

ACC: No, sir.

MJ: So you weren't going to say, "Look, I took 26 bucks because you owe me 40?"

ACC: No, sir.

MJ: So your intent at the time that you took the money out of the ID card holder was to steal the $26?

ACC: Yes, sir.

MJ: Captain Colaw, are you satisfied that this is a larceny, given the prior loan?

DC: Yes, Your Honor, I am. We discussed this at length. This is something that we thought might be an issue, so we went through quite a number of factors, went through the elements, and to quite an extent to her knowledge of the mens rea at the time of taking it. And I was satisfied that she met the elements as charged.

MJ: And did you understand what your counsel just told me?

ACC: Yes, sir.

MJ: Do you agree with what he said?

(Defense counsel conferred with the accused.)

ACC: Yes, sir.

Neither side requested further inquiry, but the appellant now asserts that the military judge "failed to adequately resolve the potential claim of right defense."

We review a military judge's decision to accept a guilty plea for an abuse of discretion by applying the substantial basis test to determine whether the record as a whole shows a substantial basis in law or fact for questioning the guilty plea. *United States v. Inabinette*, 66 M.J. 320, 322 (C.A.A.F. 2008). If the guilty plea inquiry raises a potential defense, the military judge must explain the defense and reject the plea if the defense is not negated. *United States v. Arnold*, 40 M.J. 744 (A.F. Ct. Crim. App. 1994).

Thus, we examine the record to determine whether a substantial basis exists for questioning the plea in light of the claimed defense.

The mere fact that one is indebted to another does not give the creditor the right to seize the debtor's property to satisfy the debt absent an agreement that provides such recourse; only an honest belief in a superior claim of right will give rise to a potential defense to larceny. *United States v. Gunter*, 42 M.J. 292, 295-96 (C.A.A.F. 1995). Here, the appellant expressly disavowed any such agreement with HD; she admitted that the taking was wrongful and that she had no permission to take the money by agreement or otherwise. That she took the money when HD was out of the room and then attempted to conceal her actions further belies any honest belief in her right to the money.

We find no basis in the record for the military judge to conclude that the appellant had an honest belief in a superior claim of right to the money, and we find no substantial basis for questioning the appellant's plea. The theoretical possibility that a defense existed does not render the plea improvident. *Gunter*, 42 M.J. at 297 (Gierke, J., concurring) (citing *United States v. Clark*, 28 M.J. 401, 407 (C.M.A. 1989)). *See also United States v. Arnold*, 40 M.J. 744, 746 (A.F.C.M.R. 1994) (military judge has no duty to inquire further where elements of defense not present). We find that the military judge conducted a sufficient inquiry to resolve the theoretical possibility of a claim of right defense and, finding the elements of that defense not present, did not abuse his discretion in accepting the appellant's plea of guilty.

Appellate Processing

We note that the overall delay of over 21 months between the time the case was docketed at the Air Force Court of Criminal Appeals and completion of review by this Court is facially unreasonable. Because the delay is facially unreasonable, we examine the four factors set forth in *Barker v. Wingo*, 407 U.S. 514, 530 (1972): (1) the length of the delay; (2) the reasons for the delay; (3) the appellant's assertion of the right to timely review and appeal; and (4) prejudice. *See United States v. Moreno*, 63 M.J. 129, 135-36 (C.A.A.F. 2006). When we assume error, but are able to directly conclude that any error was harmless beyond a reasonable doubt, we do not need to engage in a separate analysis of each factor. *See United States v. Allison*, 63 M.J. 365, 370 (C.A.A.F. 2006). This approach is appropriate in the appellant's case. The appellant's term of confinement ended early last year, and the post-trial record shows no evidence that the delay has had any negative impact on the appellant. Having considered the totality of the circumstances and the entire record, we conclude that any denial of the appellant's right to speedy post-trial review and appeal was harmless beyond a reasonable doubt.

Conclusion

The approved findings and the 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 the sentence are

AFFIRMED.

OFFICIAL

STEVEN LUCAS
Clerk of the Court