

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant RICKY A. COUNCIL
United States Air Force

ACM S30717 (f rev)

27 June 2006

Sentence adjudged 30 June 2004 by SPCM convened at Yokota Air Base, Japan. Military Judge: David F. Brash (sitting alone).

Approved sentence: Bad-conduct discharge and reduction to E-4.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Major James M. Winner, and Captain Anthony D. Ortiz.

Appellate Counsel for the United States: Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major Michelle M. McCluer.

Before

BROWN, MOODY, and JACOBSON
Appellate Military Judges

UPON FURTHER REVIEW

PER CURIAM:

We have examined the record of trial, the assignments of error, and the government's answer thereto. In our original opinion in this case, we returned the record to the convening authority for a new action. *United States v. Council*, ACM S30717 (A.F. Ct. Crim. App. 28 Feb 2006) (unpub. op.). That having been accomplished, we must now address the remaining assignments of error.

We conclude "the factual circumstances as revealed by the [appellant] himself objectively support [the] plea" of guilty to Charge II and its Specification. *United States v. Faircloth*, 45 M.J. 172, 174 (C.A.A.F. 1996)(quoting *United States v. Davenport*, 9

M.J. 364, 367 (C.M.A. 1980)). Therefore, we conclude that the plea is provident. *See United States v. Milton*, 46 M.J. 317, 319 (C.A.A.F. 1997); *United States v. Prater*, 32 M.J. 433 (C.M.A. 1991). We hold that the military judge did not abuse his discretion by accepting the plea. *See United States v. Eberle*, 44 M.J. 374 (C.A.A.F. 1996).

Furthermore, we are satisfied beyond a reasonable doubt of the appellant's guilt of having stolen "retail merchandise, of a total value of greater than \$500.00." Therefore, we hold that Charge I and its Specification are factually sufficient. *See United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000).

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, 10 U.S.C. § 866(c); *United States v. Reed*, 54 M.J. at 41. Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator