UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant LUIS A. DELVALLEDELIZ
United States Air Force

ACM 36162

9 June 2006

Sentence adjudged 8 November 2004 by GCM convened at Pope Air Force Base, North Carolina. Military Judge: Bruce T. Smith (sitting alone).

Approved sentence: Dishonorable discharge and confinement for 42 months.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Lieutenant Colonel Andrew S. Williams, and Captain Christopher S. Morgan.

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

Before

STONE, SMITH, and MATHEWS
Appellate Military Judges

OPINION OF THE COURT

MATHEWS, Judge:

The appellant stands convicted of one specification of committing indecent acts with a child, in violation of Article 134, UCMJ, 10 U.S.C. § 934. He pled guilty before a military judge sitting as a general court-martial and was sentenced to a dishonorable discharge and confinement for 48 months. The convening authority approved the discharge, but reduced the confinement to 42 months in accordance with the appellant's pretrial plea agreement.

The appellant now claims that his guilty plea was improvident because the military judge did not properly explain the elements of the offense. In particular, the appellant contends the military judge never explained the final element -- namely, that the acts alleged by the prosecution were prejudicial to good order and discipline or were of a nature to bring discredit upon the armed forces. *See Manual for Courts-Martial, United States* (*MCM*), Part IV, ¶ 87b(1)(e) (2005 ed.).[1] Moreover, the appellant claims the military judge failed to conduct an inquiry sufficient to establish that this element was met, as required by Article 45, UCMJ, 10 U.S.C. § 845. Specifically, the appellant asserts that the military judge did not ask him *why* his acts were prejudicial to good order and discipline or were service discrediting.

We disagree. Although the military judge's discussion with the appellant concerning the final element was brief, it was not the only word on this subject. The appellant admitted that on multiple occasions he engaged in oral-genital contact with a three-year-old girl for the purpose of gratifying his own sexual desires. He signed a stipulation of fact admitting he knew at the time what he was doing was "dirty and bad" and that he felt "ashamed" when he finished. His misconduct was discovered when the victim subsequently reported it to a security forces patrolman, and shortly thereafter, the Air Force Office of Special Investigations opened an inquiry. As a result, the appellant's command issued him a no-contact order to protect the victim. Before the case went to trial, the state Department of Social Services also became involved. The child victim was evaluated and treated on at least 16 occasions by a civilian mental health professional as a result of the appellant's actions. This constitutes sufficient evidence to objectively support the appellant's admission to the final element of the offense and his guilty plea as a whole. *See* Article 45, UCMJ; Rule for Courts-Martial 910(e); *United States v. Bickley*, 50 M.J. 93, 94 (C.A.A.F. 1999).

As our superior court noted in *United States v. Jones*, 34 M.J. 270, 272 (C.M.A. 1992):

> Admittedly, the military judge should have explained each and every element of the charged offense to the accused in a clear and precise manner. However . . . failure to do so is not reversible error if it is clear from the entire record that the accused knew the elements, admitted them freely, and pleaded guilty because he was guilty.

See also United States v. Fisher, 58 M.J. 300, 304 (C.A.A.F. 2003). The facts provided by the appellant, both orally and in the stipulation of fact, were more than sufficient to meet this standard. Although we may, in some cases, require further inquiry – for example, where the accused's conduct is facially innocuous, or the record reveals facts

[1] The 2002 edition of the MCM, in effect at the time of the appellant's court-martial, contained identical language to the current version.

inconsistent with guilt[2] – this is not one of those cases. The appellant's conduct here was criminal on its face, and there is nothing in the record suggesting an innocent explanation or a misapprehension as to the meaning and effect of the appellant's pleas.

A military judge's decision to accept a guilty plea is examined for abuse of discretion. *United States v. Eberle*, 44 M.J. 374, 375 (C.A.A.F. 1996). The plea will not ordinarily be rejected unless there is a "substantial basis" in law and fact to question the appellant's guilt. Article 59(a), UCMJ, 10 U.S.C. § 859(a); *Eberle*, 44 M.J. at 375. No such basis exists here. The appellant's guilty plea was provident and was properly accepted.

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 sentence are

AFFIRMED.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator

[2] *See United States v. Jordan*, 57 M.J. 236 (C.A.A.F. 2002); *United States v. Bullman*, 56 M.J. 377 (C.A.A.F. 2002).