

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

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UNITED STATES

v.

**Master Sergeant ULYSSES S. DOTSON**  
**United States Air Force**

**ACM S31125**

**9 November 2007**

Sentence adjudged 20 March 2006 by SPCM convened at Kadena Air Base, Japan. Military Judge: Eric L. Dillow (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 2 months, and reduction to E-1.

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

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

Before

SCHOLZ, JACOBSON, and THOMPSON  
Appellate Military Judges

This opinion is subject to editorial correction before final release.

JACOBSON, Senior Judge:

The appellant was found guilty, in accordance with his pleas, of two specifications of violating a lawful general regulation, in violation of Article 92, UCMJ, 10 U.S.C. § 892. The military judge, sitting alone as a special court-martial, sentenced the appellant to a bad-conduct discharge, confinement for 2 months, and reduction to the grade of E-1. The convening authority approved the findings and sentence as adjudged.

The appellant assigns four errors on appeal. First, he asks that we find his plea of guilty to Specification 2 of the Charge improvident. Second, he asserts that the military

judge abused his discretion by accepting the appellant's plea of guilty to specification 1.<sup>1</sup> Third, the appellant argues that the inclusion of a bad-conduct discharge in his sentence renders the sentence inappropriately severe. Finally, he asserts that he is entitled to new post-trial processing. We find all four assertions of error to be without merit, and affirm his conviction and sentence.

### *Background*

In 2004, the Air Force Office of Special Investigations (AFOSI) conducted an investigation of a Weighted Airman Promotion System (WAPS) test compromise ring that identified at least 20 airmen suspected of either wrongfully distributing or possessing controlled WAPS test materials.<sup>2</sup> The appellant was identified as being an individual who wrongfully possessed test materials. When questioned by investigators and confronted with his significant score improvement between the 2003 and 2004 testing cycle, the appellant admitted to having possessed both the Specialty Knowledge Test (SKT) and Promotion Fitness Examination (PFE) portions of the 2004 WAPS test. During the providence inquiry and in a stipulation of fact supporting his guilty plea, the appellant provided the military judge with details regarding his possession of the test materials. The appellant informed the military judge that both sets of materials were provided by his supervisor, MSgt S, the leader of the test compromise ring. According to the appellant, MSgt S provided access to the SKT prior to the testing date. This occurred while the appellant and MSgt S were riding in a car together. MSgt S gave the appellant a copy of the SKT and told him to write down the test questions on a piece of paper. The appellant did so, copying portions of 70 of the 100 test questions. After the test day, according to the appellant, MSgt S handed him a copy of the PFE hidden inside a magazine. The appellant later returned the materials to MSgt S.

### *Discussion*

We will not set aside a guilty plea on appeal unless there is “a ‘substantial basis’ in law and fact for questioning the guilty plea.” *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991). A military judge's decision to accept a guilty plea is reviewed for an abuse of discretion. *United States v. Gallegos*, 41 M.J. 446 (1995); *see generally* S. Childress and M. Davis, *2 Federal Standards of Review*, § 8.03 at 8-12 (2d ed. 1992) (“trial court's finding” that there is “an adequate factual basis” to accept a guilty plea is reviewed “under an abuse of discretion standard”). *See United States v. Eberle*, 44 M.J. 374, 375 (C.A.A.F. 1996). If the “factual circumstances as revealed by the accused himself objectively support that plea,” the factual predicate is established. *United States v. Faircloth*, 45 M.J. 172, 174 (C.A.A.F. 1996) (citations omitted). We consider the

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<sup>1</sup> This issue was raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

<sup>2</sup> Air Force Instruction 36-2605, paragraph 5.4 prohibits possession of controlled test materials for the WAPS unless an individual is specifically authorized to possess them. Air Force Instruction 36-2605, *Air Force Military Personnel Testing System*, ¶ 5.4 (14 Nov 2003).

entire record in conducting our review. *United States v. Johnson*, 42 M.J. 443, 445 (C.A.A.F. 1995).

The appellant first urges us to find his plea of guilty to Specification 2 improvident,<sup>3</sup> because his possession of the test materials was unknowing, and therefore not wrongful. Our review of the record does not support this assertion. While the appellant may not have been initially aware that the PFE materials were hidden inside the magazine given to him by MSgt S, he discovered their presence later that same day. The facts surrounding this possession were thoroughly discussed during the providence inquiry. The appellant told the military judge that he discovered the PFE materials in the magazine the same day it was given to him by MSgt S. He assured the judge that he knew what the materials were and knew it was wrong for him to possess the materials. Nonetheless, he looked through the materials, kept them overnight, and returned them to MSgt S at the latter's request. The stipulation of fact signed by the appellant prior to trial is not inconsistent with the providence inquiry, except that it indicates the appellant kept the PFE material for "a couple of days." Our review of the entire record does not reveal a substantial basis in law or fact for questioning the guilty plea. Therefore, we conclude the military judge did not abuse his discretion and the appellant's plea of guilty to Specification 2 is provident.

The appellant next claims the military judge abused his discretion by accepting the guilty plea to Specification 1 of the Charge. The appellant bases this assignment of error on several statements he made to the military judge intimating that he copied the SKT materials because he felt "intimidated" and "pressured" by MSgt S. These statements were a source of concern for the military judge during the providence inquiry. As a result, the military judge spent a great deal of time inquiring into the matter with the appellant. His inquiry spanned approximately 15 pages of the record. After his exhaustive exploration of the appellant's statements, during which the appellant assured the judge that he had not been threatened, ordered, or "literally" pressured by MSgt S, the military judge found the appellant's plea to be provident. We agree, and find the military judge did not abuse his discretion in accepting the appellant's plea to Specification 1.

The appellant next asks that we find his sentence inappropriately severe and not approve the bad-conduct discharge. This Court has the authority to review sentences pursuant to Article 66(c), UCMJ, 10 U.S.C. § 866(c), and to reduce or modify sentences we find inappropriately severe. Generally, we make this determination in light of the character of the offender and the seriousness of his offense. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982). Our duty to assess the appropriateness of a sentence is "highly discretionary," but does not authorize us to engage in an exercise of clemency. *United States v. Lacy*, 50 M.J. 286, 287; *United States v. Healy*, 26 M.J. 394 (C.M.A. 1986). The appellant's assertion of error urges us to find his sentence is inappropriately

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<sup>3</sup> Specification 2 alleged unlawful possession of the PFE portion of the test materials.

severe in light of his lengthy military career, numerous awards and accomplishments, and his service in support of Operation Enduring Freedom. We cannot overlook, however, the seriousness of the appellant's crimes. The record clearly reflects how the appellant's actions impacted other noncommissioned officers and the overall integrity of the Air Force's enlisted promotion system. Taking into account all the facts and circumstances, we do not find the appellant's sentence inappropriately severe. *Snelling*, 14 M.J. at 268. To the contrary, after reviewing the entire record, we find that the sentence is appropriate for this offender and his offenses. *United States v. Baier*, 60 M.J. 382 (C.A.AF. 2005); *Healy*, 26 M.J. at 395.

Finally, the appellant urges us to order new post-trial processing because the record does not reveal the convening authority received a written recommendation from the Staff Judge Advocate (SJA) or was advised by the SJA of the requirement to consider all written matters submitted by the appellant prior to taking action.

We review post-trial processing issues de novo. *United States v. Sheffield*, 60 M.J. 591, 593 (A.F. Ct. Crim. App. 2004) (citing *United States v. Kho*, 54 M.J. 63, 65 (C.A.A.F. 2000)). Prior to taking final action, the convening authority must consider clemency matters submitted by the accused pursuant to Rule for Courts-Martial (R.C.M.) 1105. R.C.M. 1107(b)(3); *United States v. Craig*, 28 M.J. 321, 324-5 (C.M.A. 1989). In the case sub judice, while the SJA could have provided clarity and avoided the needless expenditure of appellate resources by simply following post-trial procedures laid out by this court in *United States v. Foy*<sup>4</sup> and its progeny, we are nonetheless convinced that the convening authority did, in fact, consider all matters submitted by the appellant prior to taking action on the case. The 16 May 2006 memorandum signed by the convening authority specifically states that he considered each and every matter submitted by the appellant, along with the Air Force Form 1359,<sup>5</sup> and the appellant's personal data sheet prior to taking action on the case. While this memorandum does not specifically list the SJA's recommendation (SJAR) as a matter considered by the convening authority,<sup>6</sup> we are unaware of any legal authority for the proposition that a convening authority must expressly indicate whether he considered the SJAR. In fact, in our experience, we find it unlikely, if not unheard of, for a convening authority to take action on a court-martial without considering the recommendation of his SJA. In this vein, we agree with the Navy-Marine Corps Court of Criminal Appeals' observation in *United States v. Bennett*<sup>7</sup> that absent "affirmative evidence that this convening authority failed to consider the SJAR . . . we will presume, as we always do, that this convening authority has complied with Article 60(d), UCMJ." *Id.* at \*2. Thus, we find sufficient assurances that the convening authority considered all required matters and fulfilled his statutory obligations

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<sup>4</sup> 30 M.J. 664 (A.F.C.M.R. 1990).

<sup>5</sup> *Report of Result of Trial*.

<sup>6</sup> We note that the Air Force Form 1359 and the appellant's personal data sheet were provided to the convening authority as *attachments* to the SJAR, not as freestanding documents.

<sup>7</sup> 1997 CCA LEXIS 505 (N.M. Ct. Crim. App. Aug. 29, 1997) (unpublished opinion).

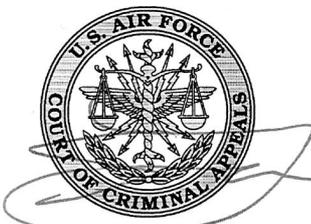
prior to taking action on the case and hold that the appellant's assertion of error is without merit.

*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; *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the findings and sentence are

AFFIRMED.

OFFICIAL



STEVEN LUCAS, GS-11, DAF  
Clerk of the Court