

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

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UNITED STATES

v.

Senior Airman **TEKOA L. FOSTER**  
United States Air Force

**ACM 36708**

**5 July 2007**

Sentence adjudged 1 February 2006 by GCM convened at Davis-Monthan Air Force Base, Arizona. Military Judge: Jack L. Anderson.

Approved sentence: Bad-conduct discharge, confinement for 12 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall and Captain Griffin S. Dunham.

Appellate Counsel for the United States: Colonel Gerald R. Bruce and Major Matthew S. Ward, and Captain Donna S. Rueppell.

Before

FRANCIS, SOYBEL, and BRAND  
Appellate Military Judges

PER CURIAM:

In accordance with her pleas, the appellant was convicted of one specification of conspiracy, and one specification of wrongful possession of cocaine with intent to distribute, in violation of Articles 81 and 112a, UCMJ, 10 U.S.C. §§ 881, 912a. Her approved sentence consists of a bad-conduct discharge, confinement for 12 months and reduction to E-1.

We have reviewed the record of trial, the assignment of errors, and the government's answer thereto. The appellant asserts her guilty pleas to both charges and their specifications were improvident, and that she was denied equal protection when solely because of her sex, she was confined in a women's correctional facility without rehabilitative opportunities afforded to similarly situated convicted males, confined at the on-base facility.

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)). Further, when reviewing the providency, this court does not end its analysis at the edge of the providence inquiry, but rather looks to the entire record. *Jordan*, 57 M.J. at 239.

The appellant, although she minimized her involvement and actions, providently pled to the charges and specifications. This issue is without merit.

Turning to the appellant's next issue, denial of equal protection while in post-trial confinement, we find this issue also to be without merit. Even considering the appellant's post-trial declaration, the claim standing alone does not demonstrate an actionable claim. Further, the appellant failed to seek relief from the trial judge.\*

An appellant who asks the court to review prison conditions must establish a clear record demonstrating both the legal deficiency and the jurisdictional basis for review. *United States v. White*, 54 M.J. 469, 472 (C.A.A.F. 2001) (citing *United States v. Miller*, 46 M.J. 248, 250 (C.A.A.F. 1997)). This appellant has done neither.

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.

OFFICIAL  
  
MARTHA E. COBLE-BEACH, TSgt, USAF  
Court Administrator

\* The record of trial had not been authenticated during the time in question; therefore the military judge had control of the case and was in the best position to explore this issue, if it had been raised.