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UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman Basic CHARLES E. FRAVEL
United States Air Force

ACM 34555

9 August 2002

Sentence adjudged 29 March 2001 by GCM convened at Hurlburt Field, Florida. Military Judge: John J. Powers (sitting alone).

Approved sentence: Bad-conduct discharge and confinement for 12 months.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Jeffrey A. Vires, and Captain Kyle R. Jacobson.

Appellate Counsel for the United States: Colonel Anthony P. Dattilo, Lieutenant Colonel Lance B. Sigmon, and Captain Kate E. Oler.

Before

SCHLEGEL, BRESLIN, and PECINOVSKY
Appellate Military Judges

PER CURIAM:

The appellant was convicted, pursuant to his pleas, of three specifications of failing to go to his appointed place of duty, wrongfully using cocaine on divers occasions, and breaking restriction, in violation of Articles 86, 112a, and 134, UCMJ, 10 U.S.C. §§ 886, 912a, 934. His approved sentence was a bad-conduct discharge and confinement for 12 months. On appeal, he claims for the first time, that two of the failures to go are multiplicious because they occurred on the same day. Alternatively, he argues the judge erred by failing to consider those two specifications as one offense for punishment purposes. We affirm the findings and sentence.

The appellant entered unconditional pleas of guilty for failing to go to his work place at 0700 and to his commander's office at 0900 to receive administrative punishment under Article 15, UCMJ, 10 U.S.C. §§ 815, on 16 November 2000. The

judge established a sufficient factual basis for the appellant's pleas to these specifications on the record. The appellant acknowledged he did not go to work and also failed to report to the commander later that morning. During the findings portion of the trial, the appellant never argued that the specifications were multiplicious or asked they be merged into a single offense. As a result, we hold that the appellant waived consideration of this issue on appeal. *United States v. Lloyd*, 46 M.J. 19, 22-23 (1997). We also decline to apply the plain error analysis in this case because the specifications are not facially duplicative. *Id.*

The appellant also argues that the judge erred by denying his request that these two specifications be viewed as a single offense for punishment. The appellant cites *United States v. Quiroz*, 55 M.J. 334, 339 (2001), in support of his argument. We review the judge's decision on this matter for an abuse of discretion. *United States v. Traeder*, 32 M.J. 455, 457 (C.M.A. 1991).

We find that the judge did not abuse his discretion in ruling that the two specifications did not constitute an unreasonable multiplication of charges for sentencing purposes. We do so based on our resolution of Issue 1, and because our analysis of the facts reveals that none of the criteria outlined in *Quiroz* are present in the case sub judice.

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. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). Accordingly, the approved findings and sentence are

AFFIRMED.

Judge PECINOVSKY did not participate.

OFFICIAL

FELECIA M. BUTLER, TSgt, USAF
Chief Court Administrator