

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Senior Airman JAMAHL D. GASTON
United States Air Force**

ACM S30372

7 March 2005

Sentence adjudged 24 March 2003 by SPCM convened at Offutt Air Force Base, Nebraska. Military Judge: Daryl E. Trawick (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 6 months, and forfeiture of 2/3 pay per month for 6 months.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, and Major Antony B. Kolenc.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, Major John D. Douglas, and Major Lane A. Thurgood.

Before

**MALLOY, JOHNSON, and GRANT
Appellate Military Judges**

PER CURIAM:

We have examined the record of trial, the assignment of error, and the government's reply thereto. The providence inquiry in this case is exceptionally brief and certainly not a model for how such an inquiry should be conducted. Nonetheless, after reviewing the entire record of trial, including the appellant's testimony on a motion for pretrial confinement credit, we hold that there is no substantial basis in law and fact for questioning the appellant's admission that his absence without leave was terminated by apprehension. *United States v. Jordan*, 57 M.J. 236 (C.A.A.F. 2002). After being advised of the elements of the offense, the appellant stated that his absence was terminated "by apprehension because neither me, nor anyone working on my behalf, voluntarily told anyone where I was. I was found when the squadron came looking for me." Nothing about the appellant's testimony, either during the providence inquiry or the

pretrial confinement motion, was inconsistent with his admission that he did not voluntarily surrender to military authority. *See Manual for Courts-Martial, United States (MCM)*, Part IV, ¶ 10c(10)(a) (2002 ed.).

We note that the adjudged forfeitures were announced by the military judge and approved by the convening authority as a fraction (2/3 pay per month for 6 months). This is incorrect. A sentence that includes partial forfeitures “shall state the exact amount in whole dollars to be forfeited each month and the number of months the forfeitures will last.” Rule for Courts-Martial 1003(b)(2). However, the appellant was not harmed by this error. Article 59(a), UCMJ, 10 U.S.C. § 859(a). To correct this error, we approve a sentence of a bad-conduct discharge, confinement for 6 months, and forfeiture of \$1,053.00 pay per month for 6 months.

The findings and sentence, as modified, 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, as modified, are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court