

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class ADAM M. HAYNES
United States Air Force**

ACM S30495

15 November 2005

Sentence adjudged 2 October 2003 by SPCM convened at Nellis Air Force Base, Nevada. Military Judge: R. Scott Howard (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 7 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Major Terry L. McElyea, Major Sandra K. Whittington, and Major Jennifer K. Martwick.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Mr. Clayton O'Connor (legal intern).

Before

**BROWN, MOODY, and FINCHER
Appellate Military Judges**

PER CURIAM:

We have examined the record of trial, the assignment of error, and the government's reply thereto. The appellant contends that the military judge abused his discretion by accepting the appellant's plea of guilty to the offense of dishonorable failure to maintain sufficient funds to cover checks he made and uttered, in violation of Article 134, UCMJ, 10 U.S.C. § 934. Specifically the appellant contends that the military judge failed to establish a factual predicate for the alleged dishonorable nature of this failure. To be dishonorable, "the accused's conduct must reflect bad faith or gross indifference" in maintaining his bank account. *Manual for Courts-Martial, United States (MCM)*, Part IV, ¶ 68(c) (2002 ed.); *United States v. Milam*, 30 C.M.R. 413, 415 (C.M.A. 1961) (citing *United States v. Groom*, 30 C.M.R. 11, 13 (C.M.A. 1960)).

During the providence inquiry, the military judge described the elements of the offense to the appellant and properly defined the relevant terms, including the meaning of dishonorable. Thereafter he elicited numerous facts underlying the offense, including the following:

- (a) That on 28 December 2002 the appellant wrote two checks to Global Cash Access.
- (b) That the checks were written on the branch of the Armed Forces Bank located at Nellis Air Force Base, NV.
- (c) That the particular checks were presented to the bank for payment, but that Global Cash Access did not get paid.
- (d) That the appellant never maintained a check register or equivalent records of checks written.
- (e) That the appellant did not attempt to reconcile his written checks with his bank account.
- (f) That the appellant learned of the bank's dishonor of the checks in June 2003.
- (g) That after receiving this notice he never paid off the checks.
- (h) That the appellant acknowledged the judge's statement that he was "not really concerned as to whether these checks got paid or not."
- (i) That the appellant acknowledged that he was grossly indifferent toward the status of his bank account.
- (j) That the appellant acknowledged the judge's assertion that his "actions regarding these two particular checks were dishonorable."

Despite the appellant's statement to the military judge that at the time he wrote the checks he thought he would have enough money to cover them, we conclude that his answers set forth a factual basis that "objectively supports" his plea. *See United States v. Faircloth*, 45 M.J. 172, 174 (C.A.A.F. 1996). We conclude that there is no "'substantial basis' in law and fact for questioning the guilty plea." *United States v. Milton*, 46 M.J. 317, 318 (C.A.A.F. 1997); *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991). We hold that the military judge did not abuse his discretion in accepting the plea.

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, 10 U.S.C. § 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court