UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class DONALD E. KRAUCH
United States Air Force

ACM 35654

15 August 2005

Sentence adjudged 18 June 2003 by GCM convened at Sheppard Air Force Base, Texas. Military Judge: Steven B. Thompson (sitting alone).

Approved sentence: Bad conduct discharge, confinement for 9 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Lieutenant Colonel Gilbert J. Andia, Jr., Major Terry L. McElyea, and Major Andrea M. Gormel.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Major James K. Floyd.

Before

STONE, SMITH, and MATHEWS
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the two assignments of error, and the government's response thereto. Finding no error, we affirm.

The appellant first contends that his plea to violation of a local training requirement prohibiting trainees from "frequenting" certain off-base establishments was improvident, and the prohibition itself unconstitutional, because no numerical values were assigned to the term "frequent." We disagree.

During his *Care* inquiry,[1] the appellant informed the military judge that he was briefed on his arrival at Sheppard Air Force Base that he "had a duty not to go" to hotels

[1] *United States v. Care*, 40 C.M.R. 247 (C.M.A. 1969).

within a 100-mile radius of the base while in training status. The purpose of the restriction was not discussed at trial, but from the appellant's admission that he and a number of the airmen used several of the local hotels as places to meet, socialize, and use illegal drugs, we infer that the base authorities had good cause for the restriction. The appellant admitted that he "went to these hotels even though [he] knew [he] was not supposed to," on at least three occasions, and knew he was violating the restriction "[o]n each of those occasions." The appellant admitted that his conduct amounted to a violation of his duties and a violation of Article 92, UCMJ.[2] Although he now argues that he did not go to the hotels "habitually," that is not what was charged. We hold that the prohibition is not vague and that the military judge did not err in advising the appellant during the providency inquiry (*United States v. Jones*, 34 M.J. 270, 272 (C.M.A. 1992)), or in accepting the appellant's pleas. *United States v. Eberle*, 44 M.J. 374, 375 (C.A.A.F. 1996).

We have carefully examined the entire record of trial to place the dereliction specification in its proper context. The appellant pled guilty to and was convicted of seven drug-related offenses, including use, attempted distribution, introduction, and conspiracy to possess methylenedioxymethamphetamine, and of fleeing apprehension stemming from those same offenses.[3] Even were we to set aside the appellant's conviction on the additional charge of dereliction, we find that would have had no impact on the sentence the appellant received at trial. Furthermore, we find that sentence to be appropriate. Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v. Baier*, 60 M.J. 382, 383 (C.A.A.F. 2005).

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 approved findings and sentence are

AFFIRMED.

OFFICIAL

FELECIA M. BUTLER, TSgt, USAF
Chief Court Administrator

[2] 10 U.S.C. § 892.
[3] In violation of Articles 80, 81, 95, and 112a, UCMJ, 10 U.S.C. §§ 880, 881, 895, 912a.