

**UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

---

**UNITED STATES**

**v.**

**Senior Airman MICHAEL E. LYNCH  
United States Air Force**

**ACM 35659 (f rev)**

**4 August 2005**

Sentence adjudged 18 April 2003 by GCM convened at Wright-Patterson Air Force Base, Ohio. Military Judge: Mary M. Boone.

Approved sentence: Bad-conduct discharge, confinement for 6 months (confinement in excess of 5 months suspended for 6 months, then remitted), forfeiture of all pay and allowances, and reduction to E-1.

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

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

Before

STONE, GENT, and SMITH  
Appellate Military Judges

UPON FURTHER REVIEW

PER CURIAM:

We have examined the record of trial, the assignment of error, and the government's answer thereto. On 2 April 2004, the appellant submitted his case to this Court on its merits. On 13 April 2004, we affirmed the findings and sentence. *United States v. Lynch*, ACM 35659 (A.F. Ct. Crim. App. 13 Apr 2004) (unpub. op.). On 23 June 2004, the appellant filed a petition with our superior court without raising any issues. On 16 December 2004, our superior court granted review on the following specified issue:

WHETHER IT IS PLAIN ERROR FOR APPELLANT TO STAND CONVICTED OF TWO SEPARATE SPECIFICATIONS OF CONSPIRACY FOR WHAT IS SUBSTANTIALLY A SINGLE CRIMINAL AGREEMENT ENCOMPASSING MORE THAN ONE OFFENSE.

The previous decision of this Court was set aside and returned for our consideration of the specified issue. *United States v. Lynch*, No. 04-0544/AF (16 Dec 2004).

The appellant asks this Court to consolidate the conspiracy offenses into a single specification and provide any sentence relief we deem appropriate. The government concedes that the appellant made only one criminal agreement that led to his convictions for conspiring to commit both larceny and wrongful disposition of government property. Article 81, UCMJ, 10 U.S.C. § 881. Despite conceding the presence of error, the government urges us not to grant relief because the appellant has failed to establish material prejudice to a substantial right. *See* Article 59(a), UCMJ, 10 U.S.C. § 859(a).

We conclude it is appropriate to consolidate the conspiracy allegations into a single specification. *See United States v. Mack*, 58 M.J. 413 (C.A.A.F. 2003). Consequently, Specifications 1 and 2 of Charge I are consolidated as follows:

CHARGE I: Violation of the UCMJ, Article 81:

Specification: In that SENIOR AIRMAN MICHAEL EVAN LYNCH, United States Air Force, 88th Security Forces Squadron, Wright-Patterson Air Force Base, Ohio, did, at or near Wright-Patterson Air Force Base, Ohio, between on or about 1 January 2001 and on or about 31 July 2001 conspire with STAFF SERGEANT JEFFREY J. HELLER to commit offenses under the Uniform Code of Military Justice, to wit: wrongful disposition of military property, to wit: a computer, of a value of less than five-hundred dollars (\$500.00), the property of the United States Military; and larceny of computers, of a value of more than five-hundred dollars (\$500.00), the property of the United States Military, and in order to effect the object of the conspiracy, the said SENIOR AIRMAN MICHAEL EVAN LYNCH did remove computers from Building 2, Wright-Patterson Air Force Base, Ohio.

With respect to the sentence, we note the military judge merged the two conspiracy specifications for sentencing purposes. She advised the court members she had done so and instructed them to consider the allegations “as one conspiracy.” We also note that the appellant was sentenced to only six months of confinement. Under these circumstances, we conclude the appellant suffered no prejudice from the erroneous use of two conspiracy specifications rather than a single specification.

Accordingly, we conclude the findings, as modified, and the sentence are correct in law and fact, and no error prejudicial to the appellant's substantial rights 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). On the basis of the entire record, the findings, as modified, and sentence are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE  
Clerk of Court