UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman Basic JAQUAN U. MARSHALL
United States Air Force

ACM S31766

26 July 2010

Sentence adjudged 05 January 2010 by SPCM convened at Ellsworth Air Force Base, South Dakota. Military Judge: David S. Castro (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 75 days, and forfeiture of $500.00 pay for one month.

Appellate Counsel for the Appellant: Major Shannon A. Bennett and Major Darrin K. Johns.

Appellate Counsel for the United States: Lieutenant Colonel Jeremy S. Weber, Captain Joseph Kubler, and Gerald R. Bruce, Esquire.

Before

BRAND, JACKSON, and GREGORY
Appellate Military Judges

PER CURIAM:

A special court-martial composed of military judge alone convicted the appellant in accordance with his pleas of one specification of violating a lawful order and five specifications of larceny of private property of a value less than $500, in violation of Articles 92 and 121, UCMJ, 10 U.S.C. §§ 892, 921. A pretrial agreement limited confinement to 75 days and required dismissal with prejudice of other charges and specifications.[1] The military judge sentenced the appellant to a bad-conduct discharge,

[1] Pursuant to the pretrial agreement the following charges and specifications were dismissed after findings: one charge and specification of absence without leave, two specifications of violating a lawful order, and one charge and specification of obstructing justice, in violation of Articles 86, 92, and 134, 10 U.S.C. §§ 886, 892, 934.

confinement for 80 days, restriction for 30 days, and forfeiture of $500 "pay for four months." The convening authority approved the bad-conduct discharge, confinement for 75 days, and forfeiture of $500 pay for one month.[2] The appellant assigns as error whether four of the five larceny specifications are multiplicious.[3]

The government charged the appellant with five specifications of larceny, alleging that he stole clothing items from dryers in his dormitory laundry facility. According to a stipulation of fact, four of the five larcenies occurred on the same day but involved different victims. The pretrial agreement required waiver of all waivable motions, and the appellant did not raise multiplicity at trial. In fact, his counsel did not even mention multiplicity as a potential motion during the military judge's inquiry concerning this provision of the pretrial agreement. Given this posture of the case, it is understandable that neither the stipulation of fact nor the appellant's statements during the plea inquiry specifically address the issue of multiplicity now raised on appeal.

We find that the appellant has expressly waived any claim of unreasonable multiplication of charges. Multiplicity is a waivable motion, the pretrial agreement required waiver of all waivable motions, and the military judge conducted a thorough inquiry to ensure the appellant knowingly consented to this provision of his agreement with the convening authority. *See* Rules for Courts-Martial 905(e) and 907(b)(3)(B). Under these circumstances the issue is waived. *United States v. Gladue*, 67 M.J. 311 (C.A.A.F. 2009).

Even if the issue had not been waived, we note that neither the stipulation of fact nor the appellant's statements during the plea inquiry necessarily show that these four specifications are multiplicious: each involves a different victim and, as stated in the stipulation, the thefts involved repeated trips to the laundry room and occurred over a period of hours. Further, according to the appellant's statements to the military judge, the thefts occurred in more than one laundry room. Finally, the four specifications do not unreasonably increase the appellant's punitive exposure since, even if these specifications were merged for sentencing, the combined maximum punishment for all offenses of which the appellant was found guilty would reach the jurisdictional maximum of a special court-martial. Under these circumstances we find that these four specifications are not multiplicious. *See United States v. Quiroz*, 55 M.J. 334 (C.A.A.F. 2001)

Conclusion

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

[2] The parties agreed at trial that the pretrial agreement precluded approval of the adjudged restriction. Forfeitures of only one month were approved to correct the erroneous announcement of forfeitures in the sentence.
[3] The issue is raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

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.

JACKSON, Senior Judge participated in the decision of this Court prior to his reassignment on 15 July 2010.

OFFICIAL

STEVEN LUCAS
Clerk of the Court