

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class JESSICA L. MORRIS
United States Air Force**

ACM 36161

25 May 2006

Sentence adjudged 3 August 2004 by GCM convened at Kirtland Air Force Base, New Mexico. Military Judge: Nancy J. Paul (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 6 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Major L. Martin Powell, and Captain Anthony D. Ortiz.

Appellate Counsel for the United States: Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Captain Daniel J. Breen.

Before

ORR, JOHNSON, and JACOBSON
Appellate Military Judges

PER CURIAM:

The appellant was convicted, in accordance with her pleas, of one specification of being absent without leave, one specification of uttering worthless checks with the intent to deceive, and five specifications of uttering worthless checks with the intent to defraud, in violation of Articles 86 and 123a, UCMJ, 10 U.S.C. §§ 886, 923a. A military judge sitting alone as a general court-martial sentenced the appellant to a bad-conduct discharge, confinement for 6 months, and reduction to the grade of E-1. The convening authority approved the sentence as adjudged. On appeal, the appellant asserts that the trial judge erred when she denied a defense motion to grant relief under Article 13, UCMJ, 10 U.S.C. § 813, for illegal pretrial punishment. We disagree and affirm.

The appellant was originally placed in her squadron's "Relieved of Duty (ROD) Flight" in September 2003 for medical reasons related to an automobile accident. This subunit was composed of squadron members who were no longer able to perform traditional security forces duties due to medical, administrative, or disciplinary reasons.

In November 2003, the appellant became the subject of an investigation into the financial irresponsibility matters that would later become the subject of her court-martial. She remained in the ROD flight until the day of her trial because she was under investigation and later pending court-martial.

Members of the ROD flight were given a variety of duties that the appellant now claims amounted to illegal pretrial punishment, in violation of Article 13, UCMJ. She also complains that she was humiliated by being told to remove her security forces beret in the presence of approximately ten other military members. Finally, she claims she was illegally intermingled with post-trial confinees during a work detail that lasted approximately seven days.

The question of whether an appellant is entitled to relief under Article 13, UCMJ, presents a “mixed question of fact and law.” *United States v. Smith*, 53 M.J. 168, 170 (C.A.A.F. 2000). “The military judge’s factual finding that there was no intent to punish is reviewed under a clearly erroneous standard.” *Id.*; *United States v. Washington*, 42 M.J. 547, 562 (A.F. Ct. Crim. App. 1995), *aff’d*, 46 M.J. 477 (C.A.A.F. 1997). We “review *de novo* the ultimate question whether an appellant is entitled to credit for a violation of Article 13[, UCMJ].” *United States v. Mosby*, 56 M.J. 309, 310 (C.A.A.F. 2002).

In the present case, the military judge heard testimony from several witnesses, including the appellant, and considered written and oral argument from both sides prior to ruling on the motion. The judge then made detailed findings of fact and conclusions of law before denying the appellant’s request for relief under Article 13, UCMJ. After carefully reviewing the testimony and arguments on the motion, we agree with the military judge’s findings of facts and conclusions of law and adopt them as our own. We find the military judge’s determination that there was no intent to punish the appellant prior to her conviction to be correct, and hold that she is not entitled to relief under Article 13, UCMJ. *See Smith*, 53 M.J. at 170.

The 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 findings and sentence are

AFFIRMED.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator