

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

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**UNITED STATES**

**v.**

**Airman Basic NICHOLAS R. PARKER  
United States Air Force**

**ACM S30583**

**26 September 2005**

Sentence adjudged 20 January 2004 by SPCM convened at Francis E. Warren Air Force Base, Wyoming. Military Judge: James L. Flanary (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 6 months, and forfeiture of \$794.00 pay per month for 7 months.

Appellate Counsel for Appellant: Colonel Carlos L. McDade and Major James M. Winner.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Captain C. Taylor Smith.

Before

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

**PER CURIAM:**

A special court-martial composed of a military judge sitting alone convicted the appellant, consistent with his pleas, of one specification of conspiracy to commit larceny, three specifications of absence without leave (AWOL), two specifications of AWOL terminated by apprehension, and one specification of larceny of military property of the United States of a value of less than \$500, in violation of Articles 81, 86, and 121, UCMJ, 10 U.S.C. §§ 881, 886, 921. His approved sentence included a bad-conduct discharge, confinement for 6 months, and forfeiture of \$794 pay per month for 7 months. On appeal, the appellant asserts that his plea of guilty to conspiracy to commit larceny was improvident because the factual predicate fails to establish that there was an

“agreement” between himself and the alleged co-conspirator to commit the offense of larceny.

In determining whether a guilty plea is provident, the test is whether there is a “substantial basis in law and fact for questioning the guilty plea.” *United States v. Jordan*, 57 M.J. 236, 238 (C.A.A.F. 2002) (citing *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991)). In order to establish an adequate factual basis for a guilty plea, the military judge must elicit “factual circumstances as revealed by the accused himself [that] objectively support that plea[.]” *Id.* at 238 (quoting *United States v. Davenport*, 9 M.J. 364, 367 (C.M.A. 1980)). We review a military judge’s decision to accept a guilty plea for an abuse of discretion. *United States v. Eberle*, 44 M.J. 374, 375 (C.A.A.F. 1996). Our determination of whether there is a substantial basis in law and fact to question a guilty plea is based upon a review of the entire record. *United States v. Negron*, 60 M.J. 136, 141 (C.A.A.F. 2004).

The appellant’s testimony during the providency inquiry objectively supports the appellant’s acknowledgement that he did enter into an agreement with his co-conspirator to steal the television from building 244 on Francis E. Warren Air Force Base, Wyoming. We conclude there is no basis to disturb the appellant’s plea and hold his plea was provident. *See United States v. Whitten*, 56 M.J. 234, 236 (C.A.A.F. 2002); *United States v. Matias*, 25 M.J. 356, 362 (C.M.A. 1987); *United States v. Jackson*, 20 M.J. 68, 69 (C.M.A. 1985).

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