

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

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**UNITED STATES**

**v.**

**Major JIM G. REILY JR.  
United States Air Force**

**ACM 35089**

**21 December 2004**

Sentence adjudged 31 January 2002 by GCM convened at Randolph Air Force Base, Texas. Military Judge: Patrick M. Rosenow.

Approved sentence: Dismissal and confinement for 9 months.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, Major Patricia A. McHugh, and Major James M. Winner.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Lance B. Sigmon, and Major Linette I. Romer.

Before

**MALLOY, JOHNSON, and GRANT**  
Appellate Military Judges

**PER CURIAM:**

We have examined the record of trial, the assignments of error, and the government's reply thereto. We conclude the military judge sufficiently elicited a factual predicate for the appellant's plea to dishonorable failure to maintain sufficient funds in his bank account. *United States v. Bullman*, 56 M.J. 377 (C.A.A.F. 2002). Furthermore, we find that while a "check card" transaction may not fit within the precise definition of making or uttering a written instrument such as a check, draft or order, we are satisfied that the appellant's dishonorable failure to maintain sufficient funds in his bank account when the check card "cyber instruments" were presented for payment is service discrediting conduct and therefore a violation of Article 134, UCMJ, 10 U.S.C. § 934. *United States v. Sapp*, 53 M.J. 90 (C.A.A.F. 2000). Finally, we are convinced that although improper rehabilitative potential testimony was admitted into evidence, the appellant was not prejudiced by it. Article 59(a), UCMJ, 10 U.S.C. § 859(a). We are

confident that the sentence would have been the same had the members not heard the objectionable testimony. *United States v. Quick*, 59 M.J. 383, 386-87 (C.A.A.F. 2004) (citing *Strickland v. Washington*, 466 U.S. 668, 694 (1984)). *See also United States v. Adams*, 59 M.J. 367 (C.A.A.F. 2004). Accordingly, the appellant was not denied effective assistance of counsel.

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 findings and sentence are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE  
Clerk of Court