UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant JAMES W. ROGERS
United States Air Force

ACM S31971

07 February 2013

Sentence adjudged 18 July 2011 by SPCM convened at Wright-Patterson Air Force Base, Ohio. Military Judge: Christopher Santoro (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 3 months, reduction to E-3, and a reprimand.

Appellate Counsel for the Appellant: Major Ja Rai A. Williams.

Appellate Counsel for the United States: Colonel Don M. Christensen; Lieutenant Colonel Linell A. Letendre; Captain Brian C. Mason; and Gerald R. Bruce, Esquire.

Before

GREGORY, HARNEY, and CHERRY
Appellate Military Judges

PER CURIAM:

A special court-martial composed of military judge alone convicted the appellant in accordance with his pleas of three specifications of violating a lawful general regulation by wrongfully developing personal, intimate, or sexual relationships with Air Force recruits or applicants, in violation of Article 92, UCMJ, 10 U.S.C. § 892, and one specification of adultery in violation of Article 134, UCMJ, 10 U.S.C. § 934. The court adjudged a bad-conduct discharge, confinement for 3 months, reduction to the grade of E-3, and a reprimand. The convening authority approved the sentence as adjudged. The appellant assigns as error that he received ineffective assistance of counsel, that the

specification of adultery in violation of Article 134, UCMJ, fails to state an offense by omitting the terminal element, and the sentence is inappropriately severe.*

Whether a charged specification states an offense is a question of law that we review de novo. *United States v. Crafter*, 64 M.J. 209, 211 (C.A.A.F. 2006) (citations omitted). "A specification states an offense if it alleges, either expressly or by [necessary] implication, every element of the offense, so as to give the accused notice and protection against double jeopardy." *Id*. at 211 (citing *United States v. Dear*, 40 M.J. 196, 197 (C.M.A. 1994)); *see also* Rule for Courts-Martial 307(c)(3). In *United States v. Fosler*, 70 M.J. 225 (C.A.A.F. 2011), our superior court invalidated a conviction of adultery under Article 134, UCMJ, because the military judge improperly denied a defense motion to dismiss the specification on the basis that it failed to allege either Clause 1 or 2 of the terminal element.

Although failure to allege the terminal element of an Article 134, UCMJ, offense is error, in the context of a guilty plea the error is not prejudicial where the military judge correctly advises the appellant of all the elements of the offense and the "plea inquiry shows that the appellant understood 'to what offense and under what legal theory [he was] pleading guilty.'" *United States v. Ballan*, 71 M.J. 28, 34-36 (C.A.A.F.) (quoting *United States v. Medina*, 66 M.J. 21, 24-26 (C.A.A.F. 2008)), *cert. denied* 133 S. Ct. 43 (2012) (mem.). During the plea inquiry in the present case, the military judge advised the appellant of each element of the charged Article 134, UCMJ, specification, including the terminal elements. The appellant acknowledged his understanding of the elements and explained how his misconduct violated the terminal elements. Therefore, as in *Ballan*, the appellant here suffered no prejudice to a substantial right: He knew under what clause he was pleading guilty and clearly understood how his conduct violated the terminal elements of Article 134, UCMJ. *See Ballan*, 71 M.J. at 34-36.

Concerning the alleged ineffectiveness of trial defense counsel, we applied the criteria in *United States v. Ginn*, 47 M.J. 236, 248 (C.A.A.F. 1997), and conclude that we can resolve this issue without additional factfinding. Examining the appellate filings and the record as a whole, we hold that the appellant was not denied effective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). Finally, the sentence adjudged and approved is not inappropriately severe. *See United States v. Healy*, 26 M.J. 394, 395-97 (C.M.A. 1988).

Conclusion

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.

* The ineffective assistance claim is made pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

Accordingly, the findings and the sentence are

AFFIRMED.

FOR THE COURT

STEVEN LUCAS
Clerk of the Court