

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman JEREMIAH D. SELTZER
United States Air Force**

ACM 36735

30 April 2007

Sentence adjudged 31 January 2006 by GCM convened at Fairchild Air Force Base, Washington. Military Judge: Print R. Maggard.

Approved sentence: Dishonorable discharge, confinement for 30 months, forfeiture of all pay and allowance for 30 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Captain Timothy M. Cox.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, and Captain Donna S. Rueppell.

Before

**BROWN, BECHTOLD, and BRAND
Appellate Military Judges**

PER CURIAM:

In accordance with his pleas, the appellant was convicted of one specification of fleeing apprehension, one specification of destroying military property over \$500.00, one specification of larceny over \$500.00, and two specifications of housebreaking, in violation of Articles 95, 108, 121, and 130, UCMJ, 10 U.S.C. §§ 895, 908, 921, 930. His approved sentence consists of a dishonorable discharge, confinement for 30 months, forfeiture of all pay and allowances for 30 months,¹ and reduction to the grade of E-1.

We reviewed the record of trial, the assignments of error, and the government's answer thereto. The appellant asserts that the portion of his sentence involving a

¹ With adjudged forfeitures suspended for 6 months and then remitted unless sooner vacated.

dishonorable discharge and confinement for 3 years is inappropriately severe.² Additionally, he asserts his guilty plea to the Specification of Charge II was improvident.³

We “may affirm only such findings of guilty and the sentence or such part or amount of the sentence, as [we find] correct in law and fact and determine[], on the basis of the entire record, should be approved.” Article 66(c), UCMJ, 10 U.S.C. § 866(c). We assess sentence appropriateness by considering the particular appellant, the nature and seriousness of the offense, the appellant’s record of service, and all matters contained in the record of trial. *United States v Snelling*, 14 M.J. 267, 268 (C.M.A. 1982).

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[.]” *Jordan*, 57 M.J. at 238 (quoting *United States v. Davenport*, 9 M.J. 364, 367 (C.M.A. 1980)). The providence inquiry must reflect the accused understood the nature of the prohibited conduct. *United States v. Sapp*, 53 M.J. 90, 92 (C.A.A.F. 2000). A military judge must explain the elements of the offense and ensure that a factual basis for each element exists. *United States v. Barton*, 60 M.J. 62, 64 (C.A.A.F. 2004) (citing *United States v Faircloth*, 45 M.J. 172 (C.A.A.F. 1996)). 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) (citing *United States v. Gallegos*, 41 M.J. 446 (C.A.A.F. 1995)).

The appellant specifically alleges he merely agreed with the military judge that the doors destroyed at the Base Exchange (BX) were military property. The record indicates the appellant not only agreed, he stated the doors were the property of the Air Force and he stipulated the building which housed the BX was the military property of the Air Force.

After a careful review of the record of trial, to include the appellant’s post-trial submissions, we conclude the appellant’s sentence, including a dishonorable discharge and 30 months confinement, is not inappropriately severe. We also find that the appellant’s plea was provident.

² The appellant’s brief cites the *adjudged* sentence of a dishonorable discharge and confinement for 3 years as being inappropriately severe. Under Article 66(c), UCMJ, 10 U.S.C. § 866(c), this Court reviews the *approved* sentence for sentence appropriateness, which in appellant’s case includes, in part, a dishonorable discharge and confinement for 30 months.

³ This error was raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

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; *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