

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

---

---

**UNITED STATES**

**v.**

**Senior Airman JUSTIN W. SLINKARD**  
**United States Air Force**

**ACM 36726**

**18 October 2007**

Sentence adjudged 21 March 2006 by GCM convened at Lackland Air Force Base, Kelly Annex, Texas. Military Judge: Joseph E. Cole (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 11 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Captain Griffin S. Dunham.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, and Captain Jamie L. Mendelson.

Before

**FRANCIS, SOYBEL, and BRAND**  
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

The appellant was convicted, according to his pleas, of dereliction of duty, larceny, and dishonorable failure to pay a just debt, in violation of Articles 92, 121, and 134, UCMJ, 10 U.S.C. §§ 892, 921, 934. He was sentenced to a bad-conduct discharge, confinement for 11 months, and reduction to E-1. The convening authority approved the sentence.

The appellant asserts one error on appeal: That his guilty plea to the specification alleging a dishonorable failure to pay a just debt was improvident because facts were elicited during the *Care*<sup>1</sup> inquiry that established a possible defense.

### *Background*

Through irresponsible overspending on personal items, the appellant got himself into serious financial trouble. He used his position as the treasurer of the Black Knights Booster Club to steal approximately \$8,000 from the club's bank account to cover his personal expenses, rent, car payments, food and other expenditures. He also used his government travel card, issued by Bank of America, for personal expenses. He was discovered when he turned the Club's financial records over to another individual before the appellant went on an extended TDY. Upon seeing the account's balance, this individual immediately knew there was a problem. An investigation ensued, ultimately resulting in the appellant's court-martial.

The appellant now asserts a possible defense, that of inability to pay his debt to Bank of America, was raised during the *Care* inquiry and, as a matter inconsistent with his plea, the military judge should have rejected the appellant's guilty plea because the issue was not remedied. See *United States v. Lee*, 16 M.J. 278 (C.M.A. 1983).

The plea inquiry established the appellant accrued a debt of \$1,277.57 on his government travel card through charges and cash advances. Some were for legitimate government related travel. However, approximately 45 transactions were improper charges related to personal expenditures and cash advances unrelated to any legitimate government business. The appellant admitted that although he was receiving his military pay during this time, beginning with his August 2006 bill, he failed to make any payments to Bank of America. Finally, in February of 2007, money was involuntarily taken out of the appellant's pay to satisfy his debt with the bank.

The appellant points to one specific part of the *Care* inquiry to support his position. When asked by the military judge why he did not pay the debt, the appellant answered, "I was already behind in other bills, and I couldn't pay that one. I chose not to pay it." During this exchange, the appellant also acknowledged that it was not a matter of him being negligent, and that the decision not to pay was either willful or grossly indifferent.

### *Analysis*

A court should not set aside a guilty plea unless there is "a 'substantial basis' in law and fact for questioning the guilty plea." *United States v. Prater*, 32 M.J. 433, 436

---

<sup>1</sup> *United States v. Care*, 40 C.M.R. 247 (C.M.A. 1969).

(C.M.A. 1991), *quoted in United States v. Hilton*, 39 M.J. 97, 100 (C.M.A. 1995), *cited in United States v. Jordan*, 57 M.J. 236, 238 (C.A.A.F. 2002). The record must be considered as a whole in evaluating the providence of guilty pleas. *United States v. Smith*, 34 M.J. 319, 324 (C.M.A. 1992). “The facts in each case will determine when a default in payment becomes dishonorable.” *United States v. Gardener*, 35 M.J. 300 (citing *United States v. Atkinson*, 27 CMR 134, 136 (C.M.A. 1958)); *see also United States v. Lockwood*, 63 M.J. 602 (N.M. Ct. Crim. App. 2006).

The appellant relies primarily on *Hilton*, 39 M.J. 97, *United States v. Bester*, 42 M.J. 75 (C.A.A.F. 1995), and *United States v. Schneiderman*, 31 C.M.R. 80 (C.M.A. 1961), to support his position. We disagree with the appellant that these cases directly support his case and find his guilty plea was provident.

The appellant cites *Schneiderman* for the proposition that too much debt and the inability to make all payments is a possible defense to a dishonorable failure to pay a just debt. However, in that case, the Court also noted that an important factor in finding the plea improvident was that the appellant had also written his creditors and made “satisfactory arrangements” to pay off his debt. *Schneiderman*, 31 C.M.R. at 82. Here, the appellant just ignored Bank of America and never tried to make any payment arrangements whatsoever.

In *Bester*, the court looked at “whether financial inability *per se* is a defense or otherwise precludes a conviction for failure to pay a just debt in violation of Article 134.” *Bester*, 42 M.J. at 78. It found that financial inability is only one factor “to be considered with others in determining whether such a failure was dishonorable.” *Id.* (quoting *Hilton*, 39 M.J. at 100).

In *Bester*, “the military judge fully questioned appellant about his financial inability to pay, the reasons for this inability, and other circumstances surrounding his failure to pay.” *Bester*, 42 M.J. at 78. There, the appellant was absent without authority for six months, resulting in his pay being cut off. *Id.* at 77. He also could have worked if he wanted to, but didn’t. *Id.* Finally, he lied to his creditor, saying his pay was stopped by either mistake or fault on the part of the military. *Id.* As in the instant case, the appellant in *Bester* admitted that his failure to pay was dishonorable, and the Court found the appellant’s plea was provident. *Id.*

In *Hilton* our superior court said, “we have never expressly held that financial inability is an affirmative defense to a charge of dishonorably failing to pay a just debt. . . . [W]e have never held that this defense in general applies without regard to an accused’s responsibility for his or her financial state.” *Hilton*, 39 M.J. at 100 (citations omitted). The court cited Rule for Courts-Martial 916 for the proposition that an accused’s inability to pay must not come from their own fault or design. Clearly, in the instant case, as in

*Bester*, it was shown the appellant's financial predicament was caused only by his own actions.

We also note that none of the above cases, nor the instant case, are similar to *Gardner*, where the court found no evidence that showed that the accused's failure to pay a just debt was deceitful, evasive, or deliberate. *Gardner*, 35 M.J. at 302. There, the accused promised to make good on his obligations and indeed made significant payments towards paying off his debts. The court said in that situation, without more evidence to show dishonorable behavior, the conviction could not stand. *Id.* at 301-02. That was not the situation in the current case.

Based on the above it is clear that courts must look at all of the circumstances surrounding an appellant's inability to pay to determine whether the appellant's actions have been dishonorable. Simply asserting that the appellant lacked the ability to pay is not a defense. If it were, anyone who spends enough and accumulates a debt sufficiently large that they no longer can afford to pay it off would have a possible defense. Precedent clearly indicates we must look further into the reasons behind the indebtedness and what the appellant did to try to rectify the situation.

Here, the judge's inquiry established, and other parts of the record confirmed, that the appellant's debt was due to his own financial irresponsibility, a good part of it through unauthorized purchases and cash advances on his government credit card. Buying a new truck, dining out often, and purchasing certain luxury items all contributed to his financial crisis. He made absolutely no effort to contact the creditor to make alternate arrangements to pay off his debt. Although he was receiving his military pay, he simply ignored the bills from this creditor for six months until his pay was finally garnished. Under the facts of this case, and considering the record as a whole, we find the appellant's failure to pay his debt was dishonorable and there was no substantial basis in law or fact for questioning the providency of the guilty plea.

#### *Conclusion*

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.

