

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman DANIEL W. WANNER
United States Air Force**

ACM 35462

14 January 2005

Sentence adjudged 25 October 2002 by GCM convened at Eielson Air Force Base, Alaska. Military Judge: Anne L. Burman (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 15 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, Major Andrew S. Williams, and Major Rachel E. VanLandingham.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Major Kevin P. Stiens.

Before

ORR, MOODY, and CONNELLY
Appellate Military Judges

OPINION OF THE COURT

This opinion is subject to editorial correction before final release.

CONNELLY, Judge:

In accordance with his pleas, the appellant was convicted of failure to go on divers occasions, dereliction in the performance of his duties, making a false official statement, three specifications of larceny, uttering worthless checks by dishonorably failing to maintain sufficient funds for payment of the checks, theft of mail, and dishonorably failing to pay a debt, in violation of Articles 86, 92, 107, 121, and 134, UCMJ, 10 U.S.C. §§ 886, 892, 907, 921, 934. A general court-martial composed of a military judge, sitting

alone, sentenced the appellant to a bad-conduct discharge, confinement for 15 months, and reduction to E-1. The convening authority approved the adjudged sentence.

The appellant alleges that his pleas to the three larceny specifications and the theft of mail specification were improvident as the military judge failed to establish an adequate factual predicate for the specific intent element in each plea. A military judge's acceptance of a guilty plea is reviewed under an abuse of discretion standard. *United States v. Eberle*, 44 M.J. 374 (C.A.A.F. 1996). If the record in its entirety reflects that an accused knew the elements of the offense to which he pleaded guilty and admitted them freely, and there is a factual basis for his plea, the plea will stand. *United States v. Jones*, 34 M.J. 270, 272 (C.M.A. 1992). The specific intent required for larceny is that "the taking, obtaining, or withholding by the accused was with the intent permanently to deprive or defraud another person of the use and benefit of the property or permanently to appropriate the property for the use of the accused or for any person other than the owner." *Manual for Courts-Martial, United States (MCM)*, Part IV, ¶ 46b(1)(d) (2002 ed.).

When a person takes property but does so "without a concurrent intent to steal," that person has committed a larceny "if an intent to steal is formed after the taking or obtaining and the property is wrongfully withheld with that intent." *MCM*, Part IV, ¶ 46c(1)(f)(i). "It is clear that larceny is committed when an intent to permanently deprive the owner of property of its use and benefit is formed at any time after the event, even when the original taking . . . was done with the intent to return it . . ." *United States v. Lee*, 37 M.J. 1020, 1021 (A.F.C.M.R. 1993) (citing *United States v. Vardiman*, 35 M.J. 132 (C.M.A. 1992)). See also *United States v. Helms*, 47 M.J. 1 (C.A.A.F. 1997).

The appellant had a dormitory room on base, but elected to reside off base. He used his dormitory room not for its intended purpose, but rather as a place to dump garbage, mail and personal property taken from other airmen, and military property from his squadron. It is not disputed that, when the property initially came into the custody of the appellant, he did not intend to permanently deprive the owner of the property. The appellant took the mail found in his room from the top of the dormitory mail boxes with the intention of delivering it to the addressee. The appellant dumped military property in his room rather than returning it to the squadron warehouse. As time passed and the various items remained in the appellant's room, his intent changed. The continued failure to return these items, his failure to tell the affected individuals he had them, and the use of some items demonstrate his intent to permanently deprive the owners of their property.

The appellant's intent is further evidenced in the five-page stipulation of fact and the appellant's admissions during the more than 100-page inquiry into the providency of the pleas. The military judge's decision to accept the appellant's pleas as to the four specifications in question was not an abuse of discretion. The stipulation of fact and the appellant's admissions establish all the elements of larceny.

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(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