UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman MASON R. HOPKINS
United States Air Force

ACM S31901

27 April 2012

Sentence adjudged 8 December 2010 by SPCM convened at Mountain Home Air Force Base, Idaho. Military Judge: David S. Castro (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 10 days, and reduction to E-1.

Appellate Counsel for the Appellant: Captain Shane A. McCammon.

Appellate Counsel for the United States: Colonel Don M. Christensen and Gerald R. Bruce, Esquire.

Before

ORR, GREGORY, and WEISS
Appellate Military Judges

OPINION OF THE COURT

GREGORY, Senior Judge:

A special court-martial composed of military judge alone convicted the appellant pursuant to his pleas of cocaine use and solicitation to distribute cocaine, in violation of Articles 112a and 134, UCMJ, 10 U.S.C. § 912a, 934, and convicted the appellant contrary to his plea of one specification of marijuana possession, in violation of Article 112a. The court sentenced the appellant to a bad-conduct discharge, confinement for 10 days, and reduction to E-1. A pretrial agreement capped confinement at five months, and the convening authority approved the sentence adjudged. The appellant argues that the

Article 134, UCMJ, solicitation charge fails to state an offense because it does not allege the terminal elements.

The appellant did not challenge the sufficiency of the specification at trial and entered pleas of guilty to the charge and specification. The military judge conducted a thorough plea inquiry which included advising the appellant of the elements of each offense to include the terminal elements of the Article 134, UCMJ, charge. The appellant acknowledged understanding all the elements and explained to the military judge how soliciting a civilian to distribute cocaine to him was service discrediting.

Failure to allege the terminal element of an Article 134, UCMJ, offense is error but, in the context of a guilty plea, the error is not prejudicial where the military judge correctly advises the appellant of all the elements and the providence inquiry shows that the appellant understood to what offense and under what legal theory he was pleading guilty. *United States v. Ballan*, No. 11-0413/NA, slip op. at 14, 18-19 (C.A.A.F. 1 March 2012); *see also United States v. Watson*, 70 M.J. 54 (C.A.A.F. 2012). 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 element of Article 134, UCMJ.

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 the sentence are

AFFIRMED.

OFFICIAL

STEVEN LUCAS
Clerk of the Court