UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Technical Sergeant TRAVIS S. HAYNES
United States Air Force

ACM S31927

25 January 2013

Sentence adjudged 22 February 2011 by SPCM convened at Osan Air Base, Republic of Korea. Military Judge: Vance H. Spath.

Approved sentence: Bad-conduct discharge, confinement for 6 months, and reduction to E-3.

Appellate Counsel for the Appellant: Major Anthony D. Ortiz and Captain Robert D. Stuart.

Appellate Counsel for the United States: Colonel Don M. Christensen; Major Scott C. Jansen; Major Brett D. Burton; and Gerald R. Bruce, Esquire.

Before

ROAN, MARKSTEINER, and HECKER
Appellate Military Judges

PER CURIAM:

At a special court-martial composed of officer members, the appellant pled guilty to making a false official statement, six specifications of making and uttering worthless checks by dishonorably failing to maintain sufficient funds, and adultery, in violation of Articles 107 and 134, UCMJ, 10 U.S.C. §§ 907, 934. After the military judge accepted his pleas and entered findings of guilty, the court sentenced him to a bad-conduct discharge, confinement for 6 months, and reduction to the grade of E-3. The convening authority approved the sentence as adjudged**.** On appeal, the appellant asserts the worthless checks and adultery specifications fail to state offenses because each omits the

required terminal element for Article 134, UCMJ, offenses. Finding no error that materially prejudices the appellant, we affirm.

Background

In May 2006, the appellant cashed five checks totaling $1,350 at the Army and Air Force Exchange Service (AAFES) at Maxwell Air Force Base (AFB), which were subsequently returned by his bank for insufficient funds. He repeated this activity in November 2007 at the Maxwell AFB Officers Club, with three checks totaling $500. These checks also bounced due to insufficient funds. After his transfer to Osan Air Base (AB), the appellant continued writing bad checks. In May 2010, he cashed ten checks for a total of $2,615 at the Osan AB AAFES, all of which bounced due to insufficient funds, as did 28 checks totaling $4,700 that he wrote to several clubs on Osan AB. For each of these checks, the appellant admitted that he failed to place or maintain sufficient funds with the bank to ensure the checks would be paid when presented to the bank, and that his failure to do so was dishonorable.

Between August 2009 and August 2010, while married to another woman, the appellant had an adulterous affair with a civilian woman who worked at a bar near Osan AB. In addition to their sexual activity, the two went on dates in the local community and spent time together during and after the appellant's shifts. The appellant purchased gifts for her and sent money to her family to pay for medical bills. At some point, the appellant told a military co-worker that he was "going to meet the in-laws," meaning his girlfriend's family in the Philippines, and gave the co-worker the impression that he was divorced when, in fact, he was still married. The appellant did go to the Philippines on leave.

For this conduct, the appellant was charged with six specifications of making and uttering worthless checks, by dishonorably failing to maintain sufficient funds, and adultery, in violation of Article 134, UCMJ. All seven specifications omitted the terminal element for Article 134, UCMJ, offenses, which the appellant alleges is error.

Sufficiency of the Article 134, UCMJ, Specification

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). The failure to allege the terminal element of an Article 134, UCMJ, offense is error. *United States v. Ballan*, 71 M.J. 28, 34 (C.A.A.F.), *cert. denied*, 133 S. Ct. 43 (2012) (mem.). In the context of a guilty plea, such an error is not prejudicial when the military judge correctly advises the appellant of all the elements and the plea inquiry shows that the appellant understood to what offense and under what legal theory he was pleading guilty. *Id.* at 34-36.

During the plea inquiry in the present case, the military judge advised the appellant of each element of the Article 134, UCMJ, offense at issue, including the terminal element. The military judge defined the terms "conduct prejudicial to good order and discipline" and "service discrediting" for the appellant. The appellant explained to the military judge how his misconduct was service discrediting, given his course of conduct; his failure to repay many of the checks until his wages were garnished; and his decision to expend his limited financial resources on his girlfriend, considering his other financial obligations, including those to his wife and their child. Therefore, as in *Ballan*, the appellant here suffered no prejudice to a substantial right, because 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.[*] Articles 59(a) and 66(c), UCMJ, 10 U.S.C. §§ 859(a), 866(c). Accordingly, the findings and sentence are

AFFIRMED.

FOR THE COURT

STEVEN LUCAS
Clerk of the Court

[*] We note that more than 18 months have elapsed between the time the case was docketed at the Air Force Court of Criminal Appeals and completion of review by this Court. Because such delay is facially unreasonable, we examine the four factors set forth in *Barker v. Wingo*, 407 U.S. 514, 530 (1972): "(1) the length of the delay; (2) the reasons for the delay; (3) the appellant's assertion of the right to timely review and appeal; and (4) prejudice." *United States v. Moreno*, 63 M.J. 129, 135-36 (C.A.A.F. 2006). When we assume error but are able to directly conclude it was harmless beyond a reasonable doubt, we do not need to engage in a separate analysis of each factor. *See United States v. Allison*, 63 M.J. 365, 370 (C.A.A.F. 2006). This approach is appropriate in the appellant's case. Having considered the totality of the circumstances and the entire record, we conclude that any denial of the appellant's right to speedy post-trial review was harmless beyond a reasonable doubt, and that relief is not otherwise warranted. *United States v. Harvey*, 64 M.J. 13, 24 (C.A.A.F. 2006); *United States v. Tardif*, 57 M.J. 219, 225 (C.A.A.F. 2002).