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

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**UNITED STATES**

**v.**

**Airman First Class AARON L. BLOCK**
**United States Air Force**

**ACM 35746**

**28 October 2005**

Sentence adjudged 31 July 2003 by GCM convened at Vandenberg Air Force Base, California. Military Judge: Timothy D. Wilson (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 12 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, Major Andrea M. Gormel, and Major Jennifer K. Martwick.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Captain C. Taylor Smith.

Before

BROWN, MOODY, and FINCHER
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignment of error, and the government's reply thereto. The appellant contends there are no findings of guilty to affirm because the government withdrew the charge of rape, in violation of Article 120, UCMJ, 10 U.S.C. § 920, after he pled guilty to the lesser-included offense (LIO) of indecent assault, in violation of Article 134, UCMJ, 10 U.S.C. § 934. Finding no error, we affirm.

Prior to trial, the appellant and the convening authority entered into a pretrial agreement (PTA) where, in exchange for the appellant's plea of guilty to indecent assault of the victim, the convening authority agreed not to go forward on the greater offense of rape and not to approve a sentence to confinement greater than 36 months. Pursuant to

the PTA, the appellant entered a plea of not guilty to the original charge and specification of rape, and providently pled guilty to the LIO of indecent assault.

At the conclusion of the guilty plea inquiry, the military judge asked the trial counsel whether they intended to go forward with the rape charge. Trial counsel indicated that they did not intend to pursue the greater offense of rape, but the military judge wanted to know whether the rape charge would be withdrawn. The government and the defense agreed that the military judge should enter findings of guilty to indecent assault. The military judge then found the appellant guilty of indecent assault, in violation of Article 134, UCMJ. After findings were entered, the trial counsel purported to "withdraw" the greater offense of rape.

As mentioned above, the appellant now contends trial counsel's "withdrawal" of the rape charge prevents this Court from affirming the guilty finding of indecent assault. Trial counsel's purported "withdrawal" of the rape charge and specification was a nullity. At the time of the "withdrawal," the military judge had *already*, pursuant to the parties' request and after having been assured by the trial counsel that the government was not going to try to prove rape, properly entered findings of guilty of indecent assault under Article 134, UCMJ. *See* Rule for Courts-Martial (R.C.M.) 910(g) and *Manual for Courts-Martial, United States*, Part IV, ¶ 45d(1)(c) (2002 ed.). Thus, by operation of law, the military judge found the appellant not guilty of rape, but guilty of the LIO of indecent assault.[1] Trial counsel's purported "withdrawal" of the rape charge after findings had been entered was of no effect under R.C.M. 604(a), because it took place after findings had been entered. This assignment of error is without merit.

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.

OFFICIAL

ANGELA M. BRICE
Clerk of Court

[1] The Court-Martial Order should be amended to properly reflect the findings and, therefore, the language in the order purporting to withdraw the rape charge should be removed. In addition, the Charge and Specification on the Court-Martial Order should be the same as indicated on the original Charge Sheet.