UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class COREY A.H. BOLIEAU
United States Air Force

ACM 37836

16 January 2013

Sentence adjudged 18 November 2010 by GCM convened at Davis-Monthan Air Force Base, Arizona. Military Judge: Martin T. Mitchell (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 7 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for the Appellant: Major Daniel E. Schoeni.

Appellate Counsel for the United States: Colonel Don M. Christensen; Lieutenant Colonel Linell A. Letendre; Captain Tyson D. Kindness; and Gerald R. Bruce, Esquire.

Before

ROAN, MARKSTEINER, and HECKER
Appellate Military Judges

PER CURIAM:

A general court-martial composed of a military judge convicted the appellant, consistent with his pleas, of violating a lawful general order by smoking "Spice," reckless driving, wrongful distribution of a controlled substance, leaving the scene of an accident, wrongfully endeavoring to impede an investigation into his hit and run traffic incident, wrongfully consuming alcohol while under the age of twenty-one and false swearing, in violation of Articles 92, 111, 112a and 134, UCMJ, 10 U.S.C. §§ 892, 911, 912a, 934. The adjudged sentence consisted of a bad-conduct discharge, confinement for 8 months, forfeiture of all pay and allowances, and reduction to the grade of E-1. Pursuant to a pretrial agreement, the convening authority lowered the confinement to 7 months and

approved the remainder of the sentence as adjudged. On appeal, the appellant asserts the specifications of leaving the scene of an accident, wrongfully endeavoring to impede an investigation into that accident, and false swearing fail to state offenses because each omits the required terminal element for Article 134, UCMJ, offenses. We also considered whether the appellant has been denied the due process right to speedy post-trial review. Finding no error that materially prejudices the appellant, we affirm.

Background

In July 2009, the 19-year-old appellant drank alcohol while socializing with other Airmen. Leaving the party with three other Airmen, he drove his car in a reckless manner and failed to stop at a stop sign, striking a truck which had the right-of-way. The truck slammed into a wall, injuring its three civilian occupants. The appellant restarted his vehicle and left the scene, without identifying himself to the truck's occupants. After driving a few blocks, the appellant stopped his vehicle so the other Airmen could pull the dragging bumper off his car. Two of the Airmen left the scene, while the appellant and another Airman drove away and eventually abandoned the vehicle. Later that evening, the appellant called the police and his insurance company to report that his car had been stolen. He later signed a false statement about the incident and provided it to his insurance company as part of his cover-up effort. He also asked another Airman to delete text messages the appellant had sent about the incident.

For this conduct, the appellant was charged with underage drinking, leaving the scene of an accident, wrongfully endeavoring to impede an investigation into his hit and run traffic incident by asking the Airman to delete the text messages, and false swearing, all in violation of Article 134, UCMJ. All specifications but the one alleging underage drinking omitted the terminal element for Article 134, UCMJ, offenses, which the appellant alleges is error.

Sufficiency of the Article 134, UCMJ, Specification

Whether a charge and specification state 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 specifications' 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, offenses 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 and his involvement of other military members in it. 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.

Post-Trial Delay

Although not raised by the appellant, we note that more than 18 months have elapsed between the time the case was docketed at this Court and completion of our review. Because such delays are 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).

Conclusion

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

LAQUITTA J. SMITH
Appellate Paralegal Specialist