UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

First Lieutenant DAVID E. BRADWAY
United States Air Force

ACM 36665

31 May 2007

Sentence adjudged 6 December 2005 by GCM convened at Beale Air Force Base, California. Military Judge: Jack L. Anderson (sitting alone).

Approved sentence: Dismissal, confinement for 48 months, forfeiture of all pay and allowances, and a fine of $15,000.00.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Captain Timothy M. Cox, and Captain Vicki A. Belleau.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Lieutenant Colonel Robert V. Combs, and Captain Daniel J. Breen.

Before

BROWN, FRANCIS, and SOYBEL
Appellate Military Judges

OPINION OF THE COURT

FRANCIS, Senior Judge:

A general court-martial convicted the appellant, consistent with his pleas, of two specifications of larceny and one specification each of conspiracy, violation of a lawful general regulation, making a false official statement, bribery, money laundering, and racketeering, in violation of Articles 81, 92, 107, 121, and 134, UCMJ, 10 U.S.C. §§ 881, 892, 907, 921, and 934.[1] The approved sentence consists of a dismissal, confinement for 48 months, forfeiture of all pay and allowances, and a fine of $15,000.00.

[1] Racketeering and money laundering are proscribed by 18 U.S.C. §§ 1952 and 1956, respectively, and were charged as violations of the general article, Article 134, UCMJ. The conspiracy charge arose out of the money laundering offense.

The appellant asserts his pleas to the conspiracy and money laundering offenses were improvident. Finding error, we modify the findings, in part, and reassess the sentence.

Background

The appellant deployed to Royal Air Force Station (RAF) Akrotiri, Cyprus, from 14 May 2003-18 October 2003. While deployed, he used his position as the assigned contingency contracting officer to commit several financial crimes. On one occasion, he conspired with a local contractor to charge the government more than twice as much for a large order of air conditioning units. The difference amounted to £25,204 Cypriot Pounds (CYP), or about $47,929, which was split between him and the contractor. To facilitate the scam, the appellant created contract documents reflecting award to a fictitious company, then falsified the amount paid to the contractor.

In dealing with another contractor, the appellant awarded a contract on a bid of £36,000 CYP, inflated the amount to £49,300 CYP, paid the contractor the amount bid, and retained the remaining £13,300 CYP, valued at $25,562, for himself. The appellant also asked the same contractor for money in return for awarding contracts and accepted free hotel accommodations from the contractor.

When his deployment ended, the appellant asked one of the contractors for help in changing his ill-gotten gains into United States currency. The contractor agreed and used a friend employed at a Cyprus bank to convert £25,000 CYP into $50,000. This conduct became the basis for the conspiracy and money laundering offenses challenged on appeal.

After returning to the United States, the appellant attempted to buy the silence of a third Cypriot contractor for $17,200, using proceeds from his illegal activities. Unfortunately for the appellant, the subject of his payment was already working with the Air Force Office of Special Investigations and the appellant was apprehended shortly thereafter.

The appellant asserts his pleas to the conspiracy and money laundering offenses are improvident because the military judge never elicited facts establishing a nexus between the appellant's conduct and interstate or foreign commerce. He also asserts the evidence does not support the finding as to the source of the funds laundered. The money laundering specification alleged the appellant obtained the money at issue through "larceny and bribery". The appellant argues the military judge did not elicit a factual basis for the finding that the funds laundered were obtained through bribery.[2]

[2] The government concedes there was no evidence the funds arose through bribery and urges us to take appropriate corrective action, but contends the challenged pleas are otherwise provident.

Discussion

We review a military judge's decision to accept a guilty plea for abuse of discretion. *United States v. Simmons*, 63 M.J. 89, 92 (C.A.A.F. 2006). Guilty pleas will not be set aside on appeal unless there is "a substantial basis in law and fact for questioning [such pleas]." *United States v. Phillippe*, 63 M.J. 307, 309 (C.A.A.F. 2006) (citations omitted).

A military judge may not accept a guilty plea unless he determines there is a sufficient factual basis for every element of the offenses to which the accused pled guilty. *Simmons*, 63 M.J. at 92. *See also* Rule for Courts-Martial (R.C.M.) 910(e) and its Discussion. The required factual predicate may be established through inquiry of the accused or through stipulations of fact entered into by the accused and the government. *Simmons*, 63 M.J. at 92 (citations omitted); *United States v. Aleman*, 62 M.J. 281, 283 (C.A.A.F. 2006). "[M]ere conclusions of law recited by an accused . . . are insufficient to provide a factual basis for a guilty plea". *United States v. Jordan*, 57 M.J. 236, 239 (C.A.A.F. 2002) (quoting *United States v. Outhier*, 45 M.J. 326, 331 (C.A.A.F. 1996)). However, we must remain "cognizant that in guilty-plea cases the quantum of proof is less than that required at a contested trial." *United States v. Pinero*, 60 M.J. 31, 33 (C.A.A.F. 2004).

Money laundering is criminalized by 18 U.S.C. § 1956. Although the statute lays out several different types of prohibited actions, the wording of the money laundering specification at issue here effectively alleged a violation of 18 U.S.C. § 1956(a)(1)(B)(i). Based on the evidence presented at trial, the conspiracy specification relies on the same code section.

One of the required elements of money laundering under 18 U.S.C. § 1956, is a financial transaction that "affects interstate or foreign commerce" or is accomplished through a "financial institution . . . engaged in, or the activities of which affect, interstate or foreign commerce . . . ." 18 U.S.C. § 1956(c)(4); *United States v. Tarkoff*, 242 F.3d 991, 994 (11th Cir. 2001). The level of impact need not be significant. Transactions which affect interstate or foreign commerce "in any way or degree" are sufficient. 18 U.S.C. § 1956(c)(4). "The phrase 'foreign commerce' means commerce between the United States and a foreign nation." 18 U.S.C. § 10; *United States v. Martens*, 59 M.J. 501, 504 (A.F. Ct. Crim. App. 2003). "Financial institution" includes any "foreign bank", which is broadly defined to include "any company organized under the laws of a foreign country . . . which engages in the business of banking . . . ." 18 U.S.C. § 1956(c)(6)(B); 12 U.S.C. § 3101(7).

The facts elicited during the *Care*[3] inquiry are sufficient to meet this element. The appellant admitted that, while stationed in a foreign country, he used a foreign contractor

[3] *United States v. Care*, 40 C.M.R. 247, 251 (C.M.A. 1969).

to exchange stolen foreign currency for United States dollars at a Cypriot bank. The appellant also admitted that he thereafter spent part of the proceeds in the United States in an attempt to buy the silence of another contractor who threatened to report his conduct to authorities and entered into a stipulation of fact to that effect. It is reasonable to infer that exchanging foreign currency for United States currency at a foreign bank, and then paying out part of the resulting dollars in the United States, affected foreign commerce to some degree. Accordingly, the military judge did not abuse his discretion in accepting the appellant's pleas of guilty to money laundering and conspiracy to commit money laundering.[4]

While the appellant's pleas were otherwise provident, we agree the evidence does not support a finding that the funds at issue arose from "bribery". There was no evidence the funds laundered by the appellant through the Cypriot bank included proceeds from his bribery offense. Indeed, it is clear from the appellant's detailed explanation during the *Care* inquiry that the laundered funds actually came from the two larcenies to which he also pled guilty. Based on this evidence, reference to bribery in the money laundering specification constitutes error, which we correct in our decretal paragraph.

This prejudicial error does not require that we order a rehearing on sentence. If we can determine to our satisfaction that "absent any error, the sentence adjudged would have been of at least a certain severity, then a sentence of that severity or less will be free of the prejudicial effects of error" and we may reassess the sentence accordingly. *United States v. Moffeit*, 63 M.J. 40, 41 (C.A.A.F. 2006) (quoting *United States v. Sales*, 22 M.J. 305, 308 (C.M.A. 1986)). However, "[i]f the error at trial was of constitutional magnitude, then we must be satisfied beyond a reasonable doubt that the reassessment cured the error. *Moffeit*, 63 M.J., at 41 (quoting *United States v. Doss*, 57 M.J. 182, 185 (C.A.A.F. 2002)).

Having applied this analysis during our careful consideration of the entire record, we are satisfied beyond a reasonable doubt that, even if the reference to bribery had been omitted from Charge VIII, Specification 3, the military judge would have adjudged a sentence consisting of no less than a dismissal, confinement for 48 months, forfeiture of all pay and allowances, and a fine of $15,000.00. We are likewise convinced the convening authority's action would have remained the same. Removal of the reference to bribery does not impact the maximum authorized punishment and does not change the underlying facts and circumstances submitted to and properly considered by the military judge at trial. Further, we find this reassessed sentence appropriate for the appellant and his crimes. Article 66(c), UCMJ, 10 U.S.C. § 866(c).

[4] The remaining elements are not in dispute and are clearly met by the evidence.

Conclusion

The finding of guilty to Charge VIII, Specification 3, is modified to except the words "and bribery". The findings, as modified, and the sentence, as reassessed, are correct in law and fact and no error prejudicial to the appellant's substantial rights occurred. Article 66(c), UCMJ; *United States v. Reed,* 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the findings, as modified, and the sentence, as reassessed, are

AFFIRMED.

OFFICIAL

MARTHA E. COBLE-BEACH, TSgt, USAF
Court Administrator