UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman MATTHEW D. BRIDGES
United States Air Force

ACM 35088

26 August 2003

Sentence adjudged 25 February 2002 by GCM convened at Scott Air Force Base, Illinois. Military Judge: Sharon A. Shaffer (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 30 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, and Major Maria A. Fried.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Lance B. Sigmon, and Lori M. Jemison (legal intern).

BEFORE

BRESLIN, STONE, and ORR, W.E.
Appellate Military Judges

OPINION OF THE COURT

STONE, Judge:

Pursuant to his pleas, the appellant was found guilty at a general court-martial of wrongful use of 3,4-methylenedioxymethamphetamine (ecstasy) and wrongful possession of 100 ecstasy pills, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. He also was convicted of breaking restriction, in violation of Article 134, UCMJ, 10 U.S.C. § 934. The adjudged and approved sentence included a bad-conduct discharge, confinement for 30 months, forfeiture of all pay and allowances, and reduction to the grade of E-1. The military judge awarded 42 days of credit for illegal pretrial confinement. On appeal, the appellant claims the military judge erred in not awarding an additional 30 days of credit. We find no error.

The appellant was placed in pretrial confinement primarily because he was deemed a flight risk. Based upon this determination and using guidance found in Air Force instructions and local procedural guidance, confinement officials initially classified the appellant as a "maximum" security confinee. Nonetheless, confinement personnel downgraded this determination to "medium in," a less restrictive status, but one that still required the appellant to be escorted whenever he left the confinement facility. Unfortunately, a lack of available escorts limited the appellant's opportunity to leave the facility.

During the period of the appellant's pretrial confinement, the confinement facility at Scott Air Force Base housed two airmen serving post-trial confinement. As adjudged prisoners, they were classified as "medium out," meaning they could leave the facility unescorted for work details, meals, and similar activities. Appellant argues he was subjected to illegal pretrial punishment based primarily on the notion that as a pretrial confinee, he had more restrictions than the post-trial confinees and fewer opportunities to go to the gym, chapel, and dining hall.

Pretrial punishment is prohibited by Article 13, UCMJ, 10 U.S.C. § 813. Our superior court has recognized that Article 13, UCMJ, prohibits "two things: (1) the intentional imposition of punishment on an accused before his or her guilt is established at trial, i.e., illegal pretrial *punishment*, and (2) arrest or pretrial confinement conditions that are more rigorous than necessary to ensure the accused's presence at trial, i.e., illegal pretrial *confinement*." *United States v. Inong*, No. 00-0327/NA, slip op. at 9 (10 Jul 2003) (emphasis added) (citing *United States v. Fricke*, 53 M.J. 149, 154 (2000) (citing *United States v. McCarthy*, 47 M.J. 162, 165 (1997))). Additionally, Rule for Courts-Martial (R.C.M.) 305(k) allows a military judge to "order additional credit for each day of pretrial confinement that involves an abuse of discretion or unusually harsh circumstances."

The military judge found that confinement officials had no intent to punish the appellant and that the restrictions, with one exception discussed below, served a proper governmental purpose. The military judge also concluded that confinement personnel had accommodated the appellant's needs as much as reasonably possible by arranging chaplain visits, allowing him to exercise in the common area of the confinement facility, and taking him to the base exchange. Additionally, he was allowed to watch television, access writing materials, make morale calls, and visit mental health providers and his defense counsel. Moreover, the military judge noted, even though the appellant's jumpsuit failed to reflect his rank, he was not on work details and thus not subject to public view. *See generally United States v. Corteguera*, 56 M.J. 330, 334-35 (2002); *United States v. James*, 28 M.J. 214 (C.M.A. 1989).

The military judge did, however, find that the second prong of Article 13, UCMJ, was violated. She found that the appellant was served a cold box meal three times a day for 42 of the 72 days he was in pretrial confinement. The military judge found this was contrary to local confinement guidance that required prisoners to be fed the same meals as active duty members. In her view, this was an "unduly" harsh circumstance.[1] Accordingly, pursuant to R.C.M. 305(k), she gave him a day of credit for each of the 42 days he did not receive a hot meal, in addition to administrative credit pursuant to *United States v. Allen*, 17 M.J. 126 (1984).

The appellant has the burden of establishing he is entitled to additional sentence credit because of an Article 13, UCMJ, violation. *United States v. Mosby*, 56 M.J. 309, 310 (2002). Whether conditions constitute unlawful pretrial punishment "presents a 'mixed question of law and fact' qualifying for independent review." *United States v. McCarthy*, 47 M.J. 162, 165 (1997) (quoting *Thompson v. Keohane*, 516 U.S. 99, 113 (1995)). We will not overturn a military judge's findings of fact, including a finding of no intent to punish, unless they are clearly erroneous. *Mosby*, 56 M.J. at 310. We review de novo the ultimate question whether appellant is entitled to an additional 30 days of credit for a violation of Article 13, UCMJ. *Id.*

We carefully reviewed the evidence on this issue, the arguments of counsel, and the military judge's findings of facts. The military judge's factual findings are supported by the evidence and are not clearly erroneous. Considering the matter de novo, we find the appellant is not entitled to additional credit for a violation of Article 13, UCMJ.

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 (2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

HEATHER D. LABE
Clerk of Court

[1] We note that R.C.M. 305(k) speaks to "unusually" harsh conditions rather than "unduly" harsh conditions, but conclude this does not affect our analysis or conclusions.