

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

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**UNITED STATES**

**v.**

**Airman CHRISTOPHER W. CLIFTON  
United States Air Force**

**ACM 34517**

**9 January 2003**

Sentence adjudged 14 March 2001 by GCM convened at Cannon Air Force Base, New Mexico. Military Judge: Barbara Brand (sitting alone).

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

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Lieutenant Colonel Timothy W. Murphy, Major Kyle R. Jacobson, and Major Karen L. Hecker.

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

Before

**SCHLEGEL, STONE, and LOVE**  
Appellate Military Judges

**OPINION OF THE COURT**

**SCHLEGEL, Senior Judge:**

The appellant was convicted, in accordance with his pleas, of being derelict in his duties, wrongfully using cocaine, communicating a threat, unlawfully making checks without sufficient funds (four specifications), and dishonorably failing to pay a just debt, in violation of Articles 92, 112a, 123a, and 134 UCMJ, 10 U.S.C. §§ 892, 912a, 923a, 934. His approved sentence consisted of a bad-conduct discharge, confinement for nine months, and reduction to airman basic. The appellant argues his plea of guilty to dishonorably failing to pay a just debt is improvident. We disagree, and affirm the findings and sentence.

The appellant was a 26-year-old airman stationed at Cannon Air Force Base (AFB), New Mexico. He wrote approximately 84 bad checks during a two-month period in August and September 2000 for over \$1,873.00. Between 28 June and 19 September 2000, the appellant also wrongfully used his government-issued credit card to obtain a total of \$1,098.00 in cash. On 29 September 2000, he self-identified with an addiction to “crack” cocaine. The appellant was then sent to Malcolm Grow USAF Medical Center, Andrews AFB, Maryland, for in-patient drug rehabilitation. While there, his continued use of cocaine resulted in his dismissal from the program and return to Cannon AFB. On 13 November, he was placed in pretrial confinement for communicating a threat to harm a non-commissioned officer. He remained in pre-trial confinement until his court-martial.

A guilty plea should only be overturned on appeal if the record “fails to objectively support the plea or there is ‘evidence in substantial conflict with the pleas of guilty.’” See *United States v. Higgins*, 40 M.J. 67, 68 (C.M.A. 1994).” *United States v. Bullman*, 56 M.J. 377, 381 (2002). A mere possibility of a conflict between a guilty plea and an accused’s statement is an insufficient basis for rejecting a guilty plea. *United States v. Shearer*, 44 M.J. 330 (1996).

Dishonorable failure to pay a just debt requires more than mere negligence. “The failure to pay must be characterized by deceit, evasion, false promises, or other distinctly culpable circumstances indicating a deliberate nonpayment or grossly indifferent attitude toward one’s just obligations.” *Manual for Courts-Martial, United States (MCM)*, Part IV, ¶ 71c (2000 ed.).

Contrary to *Bullman*, the judge in the case sub judice correctly defined “dishonorable conduct” and then elicited factual responses from the appellant. The appellant was clearly nervous and not forthcoming on any of the charged offenses. As a result, the judge was forced to ask leading questions. However, the appellant did say that the debt was valid and that he was on notice that it was due and payable. He also told the judge that he made a decision to ignore the debt and that he could have gotten the money to pay the debt.

MJ: Tell me why [use of the card] was dishonorable?

ACC: Because I know the card is only supposed to be used for official purposes.

MJ: Okay. Well, that’s more misusing the card than dereliction. What I’m more concerned about is this debt. Did you just ignore it?

ACC: Yes, Your Honor.

MJ: So basically a grossly indifferent attitude toward your obligation?

ACC: Yes, Your Honor.

MJ: And you admit you had an obligation to pay this. Even if you used it for something you weren't supposed to, you still were supposed to pay it?

ACC: Yes, Your Honor.

MJ: And you didn't pay that debt, did you?

ACC: No, Your Honor.

MJ: Why not?

ACC: Because I didn't have the money, Your Honor.

MJ: All right. But you could have found the money and made things right if you wanted to, couldn't you?

ACC: Yes, Your Honor.

....

MJ: Any legal justification or excuse for not paying this debt?

ACC: No, Your Honor.

MJ: Now, again, do you understand this isn't just being a bad bookkeeper? You had to intentionally dishonorably fail to pay this debt. Do you understand that?

ACC: Yes, Your Honor.

MJ: So that means more than just not balancing your checkbook or not sending the check and thinking that it had gone out, or that your girlfriend or your mother or somebody had sent it out for you. Do you understand?

ACC: Yes, Your Honor.

MJ: And you agree that's what your conduct was?

ACC: Yes, Your Honor.

....

MJ: I think I already asked you if you received notice [of the VISA bill] and you told me you did, but how did you receive notice?

ACC: Through the mail.

MJ: Is there any doubt in your mind that you had this obligation?

ACC: No, no doubt, Your Honor.

MJ: And did you dishonorably, between 26 October 2000 and 26 November 2000, fail to pay this debt?

ACC: Yes, Your Honor.

MJ: And again, I think I asked you a few minutes ago: did you have a legal justification or excuse? I mean, if the government messes up and it's not your fault – do you understand that?

ACC: Yes, Your Honor.

MJ: Did the government mess up here?

ACC: No, Your Honor.

MJ: This is strictly your action. Is that correct?

ACC: Yes, Your Honor.

Our colleague believes that the evidence about why the appellant did not pay the debt is not clear from the record. She believes that with all his other problems and debts

the credit card debt was at the bottom of his list of priorities, and that he actually may not have had the resources to pay the debt.

However, the evidence shows that the appellant had the resources and ability to buy and use cocaine while he was in the drug treatment program at Andrews AFB. In addition, the stipulation of fact shows that upon his return to Cannon AFB, the appellant was able to go to the club until he was placed in pretrial confinement. While in pretrial confinement, the appellant continued to receive full pay and allowances. We acknowledge the fact that the appellant had support obligations for three children by three separate women. However, despite these obligations and the bad checks the record reflects a complete lack of evidence that the appellant was financially destitute. The appellant attributed his spree of writing bad checks and wrongful use of his government credit card to his need to buy drugs. We know that while in pretrial confinement this was not an expense that he incurred. Finally, the appellant also told the judge that he could have gotten the money to pay the debt. *See United States v. Bester*, 42 M.J. 75, 77-78 (1995). We hold that the appellant's plea was provident.

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.

LOVE, Judge (dissenting):

In order to be convicted of dishonorably failing to pay a just debt, the accused must exhibit more than mere negligence in non-payment. "The failure to pay must be characterized by deceit, evasion, false promises, or other distinctly culpable circumstances indicating a deliberate non-payment or grossly indifferent attitude toward one's just obligations." *MCM*, Part IV, ¶ 71c.

In this case, I am not convinced that the appellant did anything more than neglect his credit card bill. At the time the bill was due – roughly 26 October through 26 November -- the appellant's life was in shambles. He had admitted an addiction to cocaine, received in-patient treatment at Andrews AFB, failed rehabilitation because of continued drug use, and returned to his base. Upon his return, he was restricted to base, and then placed in pre-trial confinement. All of these events took place *after* he incurred the credit card charges. It is not clear from the record what, if any, financial resources he had access to, given the fact that he: was demoted to the rank of airman; sent (in

temporary duty status) across the country for drug rehabilitation; faced a separate large debt (resulting from writing bad checks); and placed into pre-trial confinement. These facts would appear to substantiate the statement the appellant made at one point during the guilty plea inquiry that he didn't pay the debt because he had no money.

When an accused's response during a guilty inquiry is inconsistent with his admission of guilt, the judge has a duty to either make further inquiries into the providence of the plea or to enter a plea of "not guilty." Failure to do so renders the plea improvident. *United States v. Smith*, 1 M.J. 703, 706 (A.F.C.M.R. 1975).

In this case, the judge conducted a superficial inquiry that touched every element of the charge, but the inquiry consisted of leading questions by the judge and monosyllable answers by the appellant. In some cases, that might be enough to be convincing. But in this case, additional facts suggest that the appellant's failure to pay the debt resulted from serious complications in his life, rather than dishonor. Despite the judge's awareness of these facts, she did not require the appellant to describe in his own words why his failure to pay the bill was dishonorable. She also did not explore the most likely cause of his behavior, an inability to pay. An inability to pay is not "dishonorable" conduct. *U.S. v. Duval*, 31 M.J. 650, 652, citing *United States v. Savinovich*, 25 M.J. 905 (A.C.M.R. 1988).

We should not have to speculate about the facts in order to satisfy the elements of an offense, especially in a case involving a guilty plea inquiry and a stipulation of fact. Therefore, even though the appellant passively agreed with the judge's litany of questions, I am not persuaded that the appellant's plea to this specification was truly provident, given the appellant's unusually complicated personal situation when the debt became payable. I would therefore set aside the appellant's conviction of this specification.

OFFICIAL

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Chief Court Administrator