

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class STEPHANIE N. DE LEON
United States Air Force**

ACM S31989

16 February 2012

Sentence adjudged 19 September 2011 by SPCM convened at Shaw Air Force Base, South Carolina. Military Judge: Joshua E. Kastenberg (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 95 days, forfeiture of \$450.00 pay per month for 3 months, and reduction to E-1.

Appellate Counsel for the Appellant: Major Daniel E. Schoeni and Major Bryan A. Bonner.

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

Before

ORR, GREGORY, and WEISS
Appellate Military Judges

OPINION OF THE COURT

This opinion is subject to editorial correction before final release.

GREGORY, Senior Judge:

A special court-martial composed of military judge alone convicted the appellant in accordance with her pleas of one specification of desertion terminated by apprehension, in violation of Article 85, UCMJ, 10 U.S.C. § 885, and one specification of violating a lawful general regulation by wrongfully using Spice, in violation of Article 92, UCMJ, 10 U.S.C. § 892. The court sentenced her to a bad-conduct discharge, confinement for 95 days, forfeiture of \$450.00 pay per month for 3 months, and reduction

to the grade of E-1. The convening authority approved the sentence adjudged. We specified the issue of whether the appellant's plea of guilty to desertion was provident, and the briefs submitted in response to the specified issue greatly assisted in clarifying and focusing the issue.

The appellant pled guilty to the charge of desertion from her unit. Although the military judge initially neglected to inform the appellant that a required element of desertion is that she intended to permanently remain away from her unit, the appellant told the judge early in the plea inquiry that she intended to permanently remain away from her unit:

MJ: Did you intend to come back to military duty at any time?

ACC: Sir, my intentions were to remain away from the unit—from the Air Force Base until I turned myself in, you know, like to be tried [by] court-martial or to be apprehended so I could be tried by court-martial.

MJ: Okay –

ACC: But I didn't intend to go back to Pest Management Apprentice, my job. I intended to return to the base to be tried by court-martial.

Perhaps prompted by the appellant's statements concerning her intent to permanently remain away from her unit, the military judge eventually advised her of this critical element:

MJ: Now, as this court reads the elements on desertion and the explanation, it states that you must have intended to permanently remain away from your unit, organization or place of duty, and based on what you're telling this court under oath, is it fair to say that you had no intention whatsoever of ever returning to the 20th Civil Engineer Squadron?

ACC: Yes, sir.

He then asked the appellant if she had any intention of "returning to Shaw Air Force Base," and the appellant clarified her intent for the judge: "...I knew eventually I was going to return to Shaw, but only to be court-martialed and go through this process. Not to return to my job." At the conclusion of the plea inquiry into the desertion offense the appellant again acknowledged that she "did not intend, at some point, to ever return to the 20th Civil Engineer Squadron."

We review a military judge's decision to accept a plea of guilty for an abuse of discretion. *United States v. Inabinette*, 66 M.J. 320, 322 (C.A.A.F. 2008). The military judge must elicit from an accused "an adequate factual basis to support the plea—an area

in which we afford significant deference” to the military judge. *Inabinette*, 66 M.J. at 322, *quoted in United States v. Nance*, 67 M.J. 362, 365 (C.A.A.F. 2009). Any factual predicate in the record should be affirmed by the accused herself and should objectively corroborate the guilty plea. *United States v. Davenport*, 9 M.J. 364, 367 (C.M.A. 1980). The record of trial must demonstrate that the elements of each offense charged have been explained to the accused and “make clear the basis for a determination by the military trial judge . . . whether the acts or the omissions of the accused constitute the offense or offenses to which he is pleading guilty.” *United States v. Care*, 40 C.M.R. 247, 253 (C.M.A. 1969), *quoted in United States v. Jordan*, 57 M.J. 236, 238 (C.A.A.F. 2002). “[I]n reviewing a military judge’s acceptance of a plea for an abuse of discretion appellate courts apply a substantial basis test: Does the record as a whole show ‘a substantial basis in law and fact for questioning the guilty plea.’” *Inabinette*, 66 M.J. at 322 (quoting *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991) (internal quotation marks omitted)).

The charge in this case alleges that the appellant deserted her unit, the 20th Civil Engineering Squadron. Desertion terminated by apprehension requires that: (1) the accused absented herself from her *unit*, organization, or place of duty; (2) such absence was without authority; (3) the accused, at the time the absence began or at some point during the absence, intended to remain away from her *unit*, organization, or place of duty permanently; (4) the accused remained absent until the alleged date; and (5) the accused’s absence was terminated by apprehension. *Manual for Courts-Martial, United States*, Part IV, ¶ 9.b.(1) (2008 ed.). While the military judge’s plea inquiry is not a model of clarity, we find that he did not abuse his discretion in accepting the appellant’s plea of guilty. The military judge eventually explained all the elements of the offense, and the appellant related facts which objectively showed that she intended to permanently remain away from her unit. Her statements regarding her intent to return to military control for purposes of discharge or trial by court-martial does not conflict with her express intent to never return to her unit. *See for example United States v. Henriques*, 32 M.J. 832 (N.M.C.M.R. 1991) (accused’s expressed intent to return to the Navy but not his unit would be sufficient for finding of guilty of desertion from unit). The military judge did not abuse his discretion in accepting the plea of guilty to desertion.

Conclusion

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



A handwritten signature in blue ink, appearing to read "S. Lucas", is written over a faint horizontal line.

STEVEN LUCAS
Clerk of the Court