UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman GREGORY GARGIULO
United States Air Force

ACM 35726

30 June 2005

Sentence adjudged 25 July 2003 by GCM convened at Wright-Patterson Air Force Base, Ohio. Military Judge: Kevin P. Koehler.

Approved sentence: Bad-conduct discharge, confinement for 60 days, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott and Major Jennifer K. Martwick.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Captain Amy E. Hutchens.

Before

PRATT, ORR, and MOODY
Appellate Military Judges

OPINION OF THE COURT

MOODY, Senior Judge:

We have examined the record of trial, the assignment of errors, including the one submitted pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), and the government's reply thereto. Considering the evidence in the light most favorable to the prosecution, we find that a reasonable factfinder could have found all essential elements of conspiracy to commit larceny beyond a reasonable doubt. *United States v. Walters*, 58 M.J. 391, 395 (C.A.A.F. 2003); *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). *See also United States v. Barnes*, 38 M.J. 72 (C.M.A. 1993). Furthermore, after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, we are convinced of the appellant's guilt beyond a reasonable

doubt. *Walters*, 58 M.J. at 395; *Turner*, 25 M.J. at 325. *See also United States v. Matias*, 25 M.J. 356, 362 (C.M.A. 1987) ("[A] conspiracy may be contemporaneous with the substantive offense.").

We conclude that jurisdiction over the appellant had attached prior to the expiration of his term of service (ETS) and the appellant was not discharged upon his ETS. Thus, we hold that the government was not divested of jurisdiction over him. *See* Rule for Courts-Martial (R.C.M.) 202(c); *United States v. Poole*, 30 M.J. 149 (C.M.A. 1990). Furthermore, we conclude that the failure of the government to discharge the appellant upon his ETS did not constitute pretrial restraint so as to trigger the speedy trial clock. *See* R.C.M. 304(a). We find no basis to conclude that the appellant was denied his right to a speedy trial, whether under R.C.M. 707; Article 10, UCMJ, 10 U.S.C. § 810; or under the Sixth Amendment to the United States Constitution. *See Barker v. Wingo*, 407 U.S. 514 (1972).

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

ANGELA M. BRICE
Clerk of Court