UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class NICHOLAS M. GARRISON
United States Air Force

ACM 38093

28 March 2013

Sentence adjudged 20 December 2011 by GCM convened at Tinker Air Force Base, Oklahoma. Military Judge: J. Wesley Moore (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 14 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for the Appellant: Major Anthony D. Ortiz.

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

Before

GREGORY, HARNEY, and SOYBEL
Appellate Military Judges

PER CURIAM:

A general court-martial composed of military judge alone convicted the appellant in accordance with his pleas of: failure to go and absence without leave, in violation of Article 86, UCMJ, 10 U.S.C. § 886; damaging military property, in violation of Article 108, UCMJ, 10 U.S.C. § 908; use of cocaine, hydrocodone, and oxycodone, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a; wrongful appropriation of military property, in violation of Article 121, UCMJ, 10 U.S.C. § 921; and assault consummated by a battery, in violation of Article 128, UCMJ, 10 U.S.C. § 928. The court sentenced him to a bad-conduct discharge, confinement for 14 months, forfeiture of all pay and allowances, and reduction to the grade of E-1. The convening authority approved the sentence as

adjudged. The appellant assigns as error that his counsel was ineffective by failing to "adequately explore [the a]ppellant's mental state."[*]

Applying the criteria in *United States v. Ginn*, 47 M.J. 236, 248 (C.A.A.F. 1997), we conclude that we can resolve this issue without additional fact finding. Where an appellant has pleaded guilty to the charges at issue on appeal, we will consider the appellant's post-trial declarations in the context of the sworn admissions made by the appellant during the plea inquiry to determine whether the disputed matter requires a post-trial evidentiary hearing to be resolved. *Id*. at 244 In an affidavit submitted in response to the appellant's claim, trial defense counsel states that a sanity board report did not show any reason for her to question the appellant's competence to enter into a plea agreement. The record confirms this view.

The convening authority ordered a sanity board on 29 November 2011, the board convened on 5 December, and the limited results were published on 9 December – about 11 days prior to trial. The board concluded that the appellant was mentally responsible and competent to stand trial. During the plea inquiry, the appellant stated that he fully understood the elements of the offenses and explained in an articulate, narrative manner why he believed he was guilty. He stated that he fully discussed his case with his counsel; he was satisfied that his counsel's advice was in his best interest; he was pleading guilty voluntarily; and he was, in fact, guilty. Additionally, he submitted a well-written plea for clemency, in which he again acknowledged his guilt and expressed gratitude for being placed in confinement where he could not continue his illegal drug use. He mentioned nothing about being dissatisfied with his counsel or about his competence to understand his plea. Examining the appellate filings and the record as a whole, we hold that the appellant was not denied effective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984), *cited in United States v. Green*, 68 M.J. 360, 361-62 (C.A.A.F. 2010).

Conclusion

The approved findings and the 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). Accordingly, the approved findings and the sentence are

AFFIRMED.

FOR THE COURT

LAQUITTA J. SMITH
Appellate Paralegal Specialist

[*] The issue is raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).