

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

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**UNITED STATES**

**v.**

**Airman Basic DAVID D. GARZA JR.  
United States Air Force**

**ACM S30198**

**5 March 2004**

Sentence adjudged 23 August 2002 by SPCM convened at Lackland Air Force Base, Texas. Military Judge: Patrick M. Rosenow (sitting alone).

Approved sentence: Bad-conduct discharge and confinement for 4 months.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, and Captain Jennifer K. Martwick.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Lance B. Sigmon, and Major Tracey L. Printer.

Before

**PRATT, GRANT, and CONNELLY**  
Appellate Military Judges

**OPINION OF THE COURT**

CONNELLY, Judge:

The appellant was convicted, in accordance with his pleas, of three specifications of absence without leave, two of which were terminated by apprehension, and one specification of wrongful use of marijuana, in violation of Articles 86 and 112a, UCMJ, 10 U.S.C. §§ 886, 912a. A military judge, sitting as a special court martial, sentenced the appellant to a bad-conduct discharge and confinement for 4 months. The convening authority approved the sentence as adjudged.

On appeal, the appellant contends his guilty plea to the wrongful use of marijuana charge was improvident because the providence inquiry did not establish a factual basis for concluding that his use of marijuana was wrongful.

A military judge's acceptance of a guilty plea is reviewed for an abuse of discretion. *United States v. Eberle*, 44 M.J. 374, 375 (C.A.A.F. 1996). Rejection of a guilty plea on appellate review requires that the record of trial show a substantial basis in law and fact for questioning the guilty plea. *United States v. Jordan*, 57 M.J. 236, 238 (C.A.A.F. 2002) (quoting *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991)). To find a plea of guilty to be knowing and voluntary, the record of trial must reflect that the elements of each offense charged have been explained to the accused by the military judge. *United States v. Care*, 40 C.M.R. 247 (C.M.A. 1969). The context of the entire record must be examined to determine whether an accused is aware of the elements, either explicitly or inferentially. *United States v. Redlinski*, 58 M.J. 117 (C.A.A.F. 2003). The factual predicate of a plea is sufficiently established if "the factual circumstances as revealed by the accused himself objectively support that plea . . . ." *United States v. Bickley*, 50 M.J. 93, 94 (C.A.A.F. 1999) (citations omitted). In determining the providency of a guilty plea, the scope of review is limited to the record of trial. *United States v. Johnson*, 42 M.J. 443, 445 (C.A.A.F. 1995).

The *Manual for Courts-Martial, United States (MCM)*, Part IV, ¶37(c)(5) (2002 ed.) defines "wrongfulness", in pertinent part, as follows:

[U]se . . . of a controlled substance is wrongful if it is without legal justification or authorization. [U]se . . . of a controlled substance may be inferred to be wrongful in the absence of evidence to the contrary.

In this case, the military judge explained the two elements of the wrongful use of marijuana specification to the appellant. In explaining wrongfulness, the military judge told the appellant that he "must have known the nature of the substance" that he was using and that its "use must be without legal justification or authorization." The appellant acknowledged these elements both orally and in a written stipulation of fact admitted into evidence.

When asked to explain in his own words what happened, the appellant stated:

On the 22nd of February, it was at night, my parents left the house and some friends were over, and one of my friends had a marijuana pipe, and he put marijuana inside the pipe, and he handed it to me, and I smoked -- I put my lips to the pipe and I smoked it.

The appellant further stated there was "no question" that it was marijuana. The appellant's characterization of the substance was corroborated by testing the appellant's urine for drugs the following day. His urine returned positive for the presence of tetrahydrocannabinol (THC), the metabolite of marijuana. The appellant in his written stipulation admitted that his marijuana abuse was not for medical reasons. In his unsworn statement at sentencing, the appellant stated "I think drugs are bad for the

military,” also demonstrating the wrongfulness of his conduct. Finally, there is no statement by the appellant or other information in the record of trial that is inconsistent with his plea or conflicts with the required knowledge and wrongfulness of his conduct.

The purpose of the providence inquiry is to assure the trial and appellate courts that there is a factual basis for the guilty plea and the appellant understands the nature, meaning and effect of his plea. This is not a case where an appellant has pled guilty to an offense he either does not understand or did not commit. The appellant’s plea was provident and the military judge did not abuse his discretion in accepting it.

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

HEATHER D. LABE  
Clerk of Court