UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class JOHN M. GRIFFIN
United States Air Force

ACM 35869

25 January 2006

Sentence adjudged 12 December 2003 by GCM convened at McConnell Air Force Base, Kansas. Military Judge: Mary M. Boone (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 30 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Major Sandra K. Whittington, Major L. Martin Powell, and Major Karen L. Hecker.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major John C. Johnson.

Before

STONE, SMITH, and MATHEWS
Appellate Military Judges

PER CURIAM:

The appellant was tried at McConnell Air Force Base, Kansas, by a military judge sitting as a general court-martial. In accordance with his pleas, the appellant was convicted of one specification of conspiracy to commit larceny of military property, in violation of Article 81, UCMJ, 10 U.S.C. § 881; four specifications of wrongfully disposing of military property, in violation of Article 108, UCMJ, 10 U.S.C. § 908; one specification of wrongful cocaine use, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a; and five specifications of larceny of military property, in violation of Article 121, UCMJ, 10 U.S.C. § 921. The convening authority approved the adjudged sentence of a bad-conduct discharge, confinement for 30 months, and reduction to E-1.

On appeal, the appellant contends that his guilty pleas to 4 of the 11 specifications were improvident with respect to various facts alleged in the specifications. Appellate

government counsel agree with the appellant, for the most part, and so do we. We will take corrective action in our decretal paragraph.[1]

Having modified the findings, we next consider whether we can reassess the sentence. If we can determine that, "absent the error, the sentence would have been at least of a certain magnitude, then [we] may cure the error by reassessing the sentence instead of ordering a sentence rehearing." *United States v. Doss*, 57 M.J. 182, 185 (C.A.A.F. 2002) (citing *United States v. Sales*, 22 M.J. 305, 307 (C.M.A. 1986)). We are confident that we can reassess the sentence in accordance with the established criteria. This case is unusual in that, prior to announcing the sentence, the military judge explained her thought process in arriving at it. Even though the modifications we have made reduce the maximum period of confinement from 105 to 87 years, given the nature of our modifications and the military judge's presentencing colloquy, we are certain that, absent the errors, the sentence would not have been less than a bad-conduct discharge, confinement for 30 months, and reduction to E-1. We also conclude the sentence, as reassessed, is appropriate. Article 66(c), UCMJ, 10 U.S.C. § 866(c).

The finding of guilt to the Specification of Charge II is affirmed, excepting the words "on divers occasions"; the finding of guilt to Specification 1 of Charge III is affirmed, excepting the words "and other issue and equipment items"; the finding of guilt to Specification 2 of Charge III is affirmed, excepting the word "more" and substituting the word "less"; the finding of guilt to Specification 4 of Charge III is affirmed, excepting the words "and other issue and equipment items"; and the finding of guilt to Specification 2 of Charge IV is affirmed, excepting the word "more" and substituting the word "less." The findings, as modified, and the sentence, as reassessed, are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. Article 66(c), UCMJ; *United States v. Reed*, 54 M.J. 37 (C.A.A.F. 2000). Accordingly, the findings, as modified, and sentence, as reassessed, are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court

[1] We have identified a similar issue with a fifth specification and take appropriate corrective action. Our action modifies the specifications consistent with the appellant's pleas. Two specifications list a number of items stolen or disposed of by the appellant, including the catch-all "other issue and equipment items." The appellant admitted to taking or disposing of all of the specifically charged items, but there was no inquiry or other evidence regarding the "other issue and equipment items." Two specifications are modified to conform the alleged dollar amounts to the appellant's plea inquiry explanation. Finally, the appellant's plea and attendant stipulation of fact established that multiple thefts occurred as part of his conspiracy with another airman – not multiple (divers) conspiracies as the specification alleged. Accordingly, we strike the word "divers" from the single conspiracy specification.