UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant PAUL E. HANDLEY
United States Air Force

ACM 36761

26 September 2007

Sentence adjudged 25 April 2006 by GCM convened at Moody Air Force Base, Georgia. Military Judge: Ronald A. Gregory (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 8 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Captain Griffin S. Dunham.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, Major Kimani R. Eason, and Captain Daniel J. Breen.

Before

WISE, BRAND, and HEIMANN
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

Consistent with his pleas the appellant pled guilty to a single charge and specification of violating a no contact order and one charge with two specifications of using cocaine and ecstasy on divers occasion, in violation of Articles 92 and 112a, UCMJ, 10 U.S.C. §§ 892, 912a. The appellant now claims his guilty plea to violating the order is improvident because it was an unlawful order. Specifically, he contends the no contact order was invalid because it prohibited the appellant from making any communications with his former girlfriend, merely because she was a potential witness in his case and thus unlawfully infringed upon the appellant's constitutional rights to free speech and compulsory process. We disagree.

Providency of the Plea

In determining whether a guilty plea is provident, the standard of review is whether there is a substantial basis in law and fact for questioning the guilty plea. *United States v. Hardeman*, 59 M.J. 389, 391 (C.A.A.F. 2004). Moreover, we will not overturn a military judge's acceptance of a guilty plea based on the mere possibility of a defense. *United States v. Faircloth*, 45 M.J. 172, 174 (C.A.A.F. 1996). When reviewing a providency inquiry, the Court does not end its analysis at the edge of the providence inquiry. It can look at the entire record to determine whether the dictates of Article 45, UCMJ, 10 U.S.C. § 845; Rule for Courts-Martial 910(e); and *United States v. Care*, 40 C.M.R. 247 (C.M.A. 1969) and its progeny have been met. *United States v. Jordan*, 57 M.J. 236, 239 (C.A.A.F. 2002). The record must "show a 'substantial basis' in law and fact for" rejecting the plea of guilty. *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991). We also will not "speculate post-trial as to the existence of facts which might invalidate an appellant's guilty pleas." *United States v. Johnson*, 42 M.J. 443, 445 (C.A.A.F. 1995). We review a military judge's decision to accept a guilty plea for an abuse of discretion. *United States v. Eberle*, 44 M.J. 374, 375 (C.A.A.F. 1996) (citing *United States v. Gallegos*, 41 M.J. 446 (C.A.A.F. 1995)).

In this case, the question centers on the validity of the order and whether the military judge was required to question the order's validity when defense expressly advised the judge he had done ". . . some legal research on it and I do believe it was a lawful order." Regarding the claim his rights to free speech were violated the Supreme Court has long-recognized the principle that "the military is, by necessity, a specialized society." *Parker v. Levy*, 417 U.S. 733 (1974). As stated by our superior court in *United States v. Moore*, 58 M.J. 466 (C.A.A.F. 2003), military authorities may curtail a service member's communication and association with other individuals – and thus burden the service member's freedom of speech and association – provided the authorities act with a valid military purpose and issue a clear, specific, narrowly drawn mandate. *Id.* at 468. In assessing the validity of that order, we are to look to the specific conduct at issue. *United States v. Jeffers*, 57 M.J. 13, 15 (C.A.A.F. 2002).

At trial the appellant acknowledged the purpose of the order was to prevent his contact with a potential witness.[1] He readily agreed with the military judge that the order was to "prevent contact with a potential witness against [him] in a possible court-martial." He also agreed the order would expire after the court-martial and the order was "directly connected with the maintenance of good order in the military specifically." In pleading guilty the appellant advised the military judge that he violated the order because of his desire to "get some things off of [his] chest" in anticipation of the court-martial. Looking solely to the conduct at issue the military judge did not abuse his discretion in

[1] It is also clear from the record that the subject of the order was a subordinate member of the same unit.

accepting a guilty plea to this order when the violation of the order amounted to the appellant discussing his court-martial with a potential witness in the days prior to trial.

Similarly, the order to have no contact with AIC AS did not unlawfully infringe upon the appellant's constitutional right to compulsory process for obtaining witnesses in his favor.[2] *See United States v. Nieves*, 44 M.J. 96 (C.A.A.F. 1996). While we acknowledge that an order completely denying access to witnesses is invalid, that is not our case. *See United States v. Aycock*, 35 C.M.R. 130, 134 (C.M.A. 1964). At trial, the appellant made no assertions to the military judge that he or his counsel were prevented from preparing for trial or denied any access to any witnesses.

Therefore we find the military judge did not abuse his discretion in accepting a guilty plea to violating this order when, as here, the accused made no claims at trial that he was denied compulsory process. Having determined the order was lawful and after carefully reviewing the entire record of trial, we find no basis in law or fact for questioning the appellant's guilty plea. Further, we ourselves are convinced beyond a reasonable doubt the appellant is guilty of that offense.

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 findings and sentence are

AFFIRMED.

OFFICIAL

STEVEN LUCAS, GS-11, DAF
Clerk of the Court

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[2] "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the Assistance of Counsel for his defense." U.S. CONST. AMEND. VI.