UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman PERNELL R. HILL
United States Air Force

ACM 35477

31 August 2004

Sentence adjudged 14 November 2002 by GCM convened at McGuire Air Force Base, New Jersey. Military Judge: Rodger A. Drew (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 24 months, forfeiture of all pay and allowances, and reduction to E-1.

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, Major John D. Douglas, and Captain Kevin P. Stiens.

Before

STONE, GENT, and SMITH
Appellate Military Judges

PER CURIAM:

We examined the record of trial, the assignments of error, and the government's reply thereto. The appellant alleged that the Specification of Charge I, failure to follow a lawful order, in violation of Article 92, UCMJ, 10 U.S.C. § 892, is multiplicious or an unreasonable multiplication of charges with Specification 1 of Charge II, resisting apprehension, in violation of Article 95, UCMJ, 10 U.S.C. § 895. We review multiplicity claims de novo. *United States v. Palagar*, 56 M.J. 294, 296 (C.A.A.F. 2002). Where two offenses each require proof of separate elements, the offenses are not multiplicious. *Schmuck v. United States*, 489 U.S. 705 (1989). Because the challenged charges and specifications require proof of separate elements, we hold that they are not multiplicious. *United States v. Weymouth*, 43 M.J. 329, 340 (C.A.A.F. 1995). We review unreasonable

multiplication of charges claims for an abuse of discretion. *United States v. Pauling*, 60 M.J. 91 (C.A.A.F. 2004). We applied the five-factor test for determining unreasonable multiplication of charges endorsed by our superior court in *United States v. Quiroz*, 55 M.J. 334, 338 (C.A.A.F. 2001). We hold that the military judge did not abuse his discretion when he concluded that the challenged charges and specifications were not an unreasonable multiplication of charges. The appellant's remaining assignment of error is without merit.

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