UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman STACIE E. INGRAM
United States Air Force

ACM 36854

19 October 2007

Sentence adjudged 30 June 2006 by GCM convened at Scott Air Force Base, Illinois. Military Judge: Gary M. Jackson.

Approved sentence: Bad-conduct discharge, confinement for 90 days, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for the Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Captain Anthony D. Ortiz.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, and Captain Jason M. Kellhofer.

Before

WISE, BRAND, and HEIMANN
Appellate Military Judges

PER CURIAM:

In accordance with her pleas, the appellant was convicted of two specifications of failure to go, two specifications of false official statements, three specifications of larceny,[1] and two specifications of making checks without sufficient funds, in violation of Articles 86, 107, 121, and 123a, UCMJ, 10 U.S.C. §§ 886, 907, 921, 923a. Contrary to her plea, the appellant was convicted of one specification of larceny of a vehicle, valued over $500.00, in violation of Article 121, UCMJ. The approved sentence consists of a bad-conduct discharge, confinement for 90 days, total forfeitures, and reduction to E-1.

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[1] One of the specifications was for an amount in excess of $500.00.

The issues on appeal are: 1) Whether the appellant's conviction for larceny of a vehicle was legally and factually insufficient; and 2) Whether the court-martial order must be amended for the additional charge and its specification.[2]

Background

During a short period of time, from September 2005 to January 2006, the appellant managed to steal money from her bank and her roommate, write bad checks to her roommate and a local car dealership, fail to go to her appointed place of duty on two occasions, and lie to two of her supervisors. The appellant was able to accomplish the larcenies and check writing by making deposits from one of her accounts into another, neither of which had any money but at certain limited times appeared to have a positive balance.[3] She providently pled guilty to these charges.

On or about 26 October 2005, the appellant decided she needed a new car, so she went car shopping at a local Saturn dealership. After agreeing on a particular vehicle, the dealership financial officer assisted the appellant with acquiring financing. This process was long and involved as the appellant had a terrible credit rating. Eventually, the financial officer acquired financing for the appellant through Wells Fargo Bank at an interest rate of 16.5%. This became viable only when the appellant's mother co-signed for the appellant. Wells Fargo approved the appellant's request for a loan without knowledge of or contingent upon any potential down payment. Prior to leaving the dealership after the sale was made and financing was approved, the appellant wrote a check for $3,000.00 for the down payment on the car.[4] This check bounced, and the appellant was clearly aware that would be the case when she wrote the check.

The dealership contacted the appellant; she returned with the car, made a debit withdrawal for $1,000.00 and wrote another check for $2,020.00.[5] This one bounced as well. The third visit resulted in a third check not being honored. The appellant's mother then made good on the down payment. At no time, did Saturn or the bank repossess the car or report it as stolen.

Legal and Factual Sufficiency of Larceny Specification

The test for factual sufficiency is whether this Court is convinced beyond a reasonable doubt of the appellant's guilt, after weighing all the evidence and making allowances for not having personally observed the witnesses. *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). The test for legal sufficiency is whether considering the

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[2] The government concedes the second issue.
[3] Generally, known as "check kiting."
[4] The financial officer testified the appellant would not have received the car if the dealership had known the personal check of the appellant would bounce.
[5] The additional $20.00 was to cover the fee associated with the return of the first bounced check.

evidence in the light most favorable to the government, any reasonable factfinder could have found all of the essential elements beyond a reasonable doubt. *Id.* at 324; *see also United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002). "A criminal 'false pretense' is any misrepresentation of fact by a person who knows it to be untrue, which is intended to deceive, which does in fact deceive, and which *is the means by which value is obtained from another without compensation*." Department of the Army Pamphlet 27-9, *Military Judges' Benchbook*, ¶ 3-46-1 (15 September 2002) (emphasis added).

After reviewing the record of trial, we conclude the evidence is not legally and factually sufficient to sustain the conviction for the larceny of a vehicle. The appellant left the Saturn dealership with approved financing (and a co-signer) for the car. Notwithstanding that she did write a check for the down payment with the intent to defraud, she did not steal the car.

Sentence Reassessment

Based upon dismissal of a larceny specification, we next analyze the case to determine whether we can reassess the sentence. *See United States v. Doss*, 57 M.J. 182 (C.A.A.F. 2002). Before reassessing a sentence, this Court must be confident "that, absent any error, the sentence adjudged would have been of at least a certain severity." *United States v. Sales*, 22 M.J. 305, 308 (C.M.A. 1986). A "dramatic change in the penalty landscape" gravitates away from our ability to reassess a sentence. *United States v. Riley*, 58 M.J. 305, 312 (C.A.A.F. 2003). Ultimately, a sentence can be reassessed only if we "confidently can discern the extent of the error's effect on the sentencing authority's decision." *United States v. Reed*, 33 M.J. 98, 99 (C.M.A. 1991). In *United States v. Harris*, 53 M.J. 86 (C.A.A.F. 2000), our superior court decided that if the appellate court cannot determine that the sentence would have been at least of a certain magnitude, it must order a rehearing. *Id.* at 88 (citing *United States v. Poole*, 26 M.J. 272, 274 (C.M.A. 1988)).

By disapproving the larceny of the car, the maximum punishment is reduced from confinement for 22 years, 8 months to confinement for 17 years, 8 months.[6] The appellant was involved in an elaborate plan to steal money, stole from the bank on about 43 occasions, wrote bad checks, stole from her roommate, failed to go to work, and lied on two occasions to two different supervisors. We are confident we can determine the sentence would have been of a certain magnitude. Considering only the evidence before the sentencing authority, we are convinced beyond a reasonable doubt that the members would have awarded a bad-conduct discharge, confinement for 60 days, total forfeitures, and reduction to E-1. *See United States v. Peoples*, 29 M.J. 426, 428 (C.M.A. 1990). Furthermore, we find this sentence to be appropriate.

[6] We do not find this to be a drastic change in the sentencing landscape.

Court-Martial Order

Finally, the court-martial order is technically incorrect. It indicates that the appellant was found guilty of the Additional Charge and its Specification when, in fact, it was withdrawn after arraignment. Additionally, the court-martial order is signed by the "Chief, Military Justice" rather than the "Staff Judge Advocate" or the "Acting Staff Judge Advocate," in contravention to Air Force Instruction 51-201, *Administration of Military Justice*, ¶ 12.1 (26 November 2003). A corrected court-martial order needs to be accomplished consistent with this opinion.

Conclusion

Specification 4 of Charge II is dismissed. The remaining findings 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, 10 U.S.C. § 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the remaining findings, and sentence, as reassessed, are

AFFIRMED.

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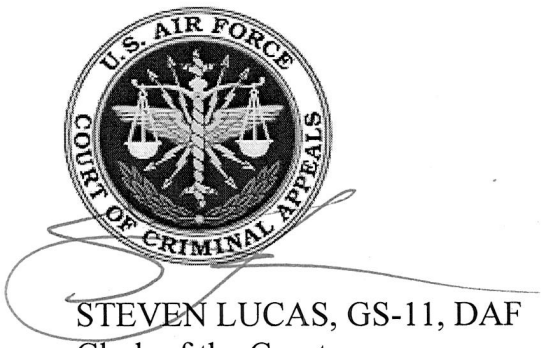

STEVEN LUCAS, GS-11, DAF
Clerk of the Court