

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman MATTHEW R. JACKSON
United States Air Force

ACM 36082

31 March 2006

Sentence adjudged 4 August 2004 by GCM convened at Nellis Air Force Base, Nevada. Military Judge: Glenn L. Spitzer (sitting alone).

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

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Major Sandra K. Whittington.

Appellate Counsel for the United States: Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, Major Jin-Hwa L. Frazier, and Major Nurit Anderson.

Before

BROWN, MOODY, and FINCHER
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignment of error, and the government's answer. The appellant was convicted, in accordance with his pleas, of desertion, failure to obey a lawful order, and fleeing apprehension, in violation of Articles 85, 92, and 95, UCMJ, 10 U.S.C. §§ 885, 892, 895. The appellant argues his guilty plea to a portion of Charge I and its Specification was ambiguous and therefore improvident. We agree and shorten the duration of the desertion offense by 23 days. We also reassess the sentence and find the approved sentence appropriate nonetheless.

The appellant was scheduled to separate from the Air Force in October 2002. In preparation for this event, his unit released him on 12 August 2002 to begin out-

processing. On the same day, the Air Force Security Forces Office of Investigations interviewed him in connection with an on-going investigation. After the interview, the appellant did not complete his out-processing. Instead, he left his unit and went to Jacksonville, Florida, where his mother lived. On 23 August 2002, his unit realized he was gone. They contacted him by telephone on 4 September 2002, told him he was absent without leave (AWOL), and ordered him to return. The appellant agreed to return, but did not surrender himself to military control until 22 March 2004.

The appellant pled guilty to desertion for the entire period of his absence from 12 August 2002 to 22 March 2004. During the providency inquiry, the military judge asked the appellant why he had left his unit on 12 August 2002. The appellant replied that he thought he had been released. The military judge then asked him when he had realized that he was AWOL. He replied that he had become aware of it during the 4 September 2002 phone call. Although the military judge inquired further, he failed to resolve the appellant's contradictory responses regarding the time period from 12 August 2002 to 3 September 2002. *See generally United States v. Bullman*, 56 M.J. 377, 382-83 (C.A.A.F. 2002). Accordingly, we affirm only so much of Charge I and its Specification as begins 4 September 2002 and ends 22 March 2004. The time period from 12 August 2002 to 3 September 2002 is set aside and dismissed.

Because we have set aside and dismissed a portion of Charge I and its Specification, we must now determine whether we can reassess the sentence in accordance with the criteria set forth in *United States v. Sales*, 22 M.J. 305 (C.M.A. 1986). We are convinced beyond a reasonable doubt that, even absent the error, the military judge would have sentenced the appellant to at least a bad-conduct discharge, confinement for 8 months, and reduction to E-1. Shortening the span of this lengthy desertion offense by 23 days would not have impacted the sentence imposed. Accordingly, we find the approved sentence appropriate under Article 66(c), UCMJ, 10 U.S.C. § 866(c). *See United States v. Jones*, 39 M.J. 315, 317 (C.M.A. 1994).

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, 41 (C.A.A.F. 2000). Accordingly, the findings, as modified, and the sentence, as reassessed, are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court