UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class MICHAEL J. LANTZ
United States Air Force

ACM 36163

26 May 2006

Sentence adjudged 4 November 2004 by GCM convened at Whiteman Air Force Base, Missouri. Military Judge: Kirk R. Granier (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 1 year and 2 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Major John N. Page III.

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

Before

ORR, JOHNSON, and JACOBSON
Appellate Military Judges

PER CURIAM:

A general court-martial composed of a military judge sitting alone convicted the appellant, consistent with his pleas, of failing to go to his appointed place of duty, larceny, multiple bad check offenses, and failure to pay a just debt, in violation of Articles 86, 121, 123a, and 134, UCMJ, 10 U.S.C. §§ 886, 921, 923a, 934. On appeal, the appellant asserts that his pleas to the offenses of failure to go and failure to pay his just debt to the Security Finance Corporation were improvident.[1] Finding no error, we affirm.

In determining whether a guilty plea is provident, the test is whether there is a "substantial basis in law and fact for questioning the guilty plea." *United States v. Jordan*, 57 M.J. 236, 238 (C.A.A.F. 2002) (citing *United States v. Prater*, 32 M.J. 433,

[1] The appellant asserts these errors pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

436 (C.M.A. 1991)). In order to establish an adequate factual basis for a guilty plea, "the military judge must elicit 'factual circumstances as revealed by the accused himself [that] objectively support that plea[.]'" *Jordan*, 57 M.J. at 238 (quoting *United States v. Davenport*, 9 M.J. 364, 367 (C.M.A. 1980)). 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)). If an accused, after a plea of guilty, sets up matter inconsistent with the plea, a plea of not guilty shall be entered into the record, and the court shall proceed as though he had pleaded not guilty. *United States v. Hardeman*, 59 M.J. 389, 391 (C.A.A.F. 2004) (citing Article 45a, UCMJ, 10 U.S.C. § 845a). *See also United States v. Clark*, 28 M.J. 401, 405 (C.M.A. 1989). Furthermore, "an accused servicemember cannot plead guilty and yet present testimony that reveals a defense to the charge." *Clark*, 28 M.J. at 405. Article 45, UCMJ, 10 U.S.C. § 845, requires military judges to resolve inconsistencies and defenses during the providence inquiry or the guilty plea must be rejected. *See also United States v. Perron*, 58 M.J. 78, 82 (C.A.A.F. 2003); *United States v. Outhier*, 45 M.J. 326, 331 (C.A.A.F. 1996).

During the providence inquiry, the military judge correctly instructed the appellant on each of the elements of failure to go and failure to pay just debts and properly defined the appropriate terms. The appellant then admitted to each of the elements and explained to the military judge why he was guilty of both offenses. The judge accepted the appellant's guilty pleas.

The appellant claims that he was unable to report for duty on the morning in question because he was sick, and was unable to pay his debt to Security Finance Corporation because he had been placed in pretrial confinement. Both of these excuses were fully explored during the providence inquiry. The appellant told the military judge that they did not constitute defenses to the specifications and he believed he was, in fact, guilty. For example, while he told the military judge that he had been feeling ill the night before he failed to appear at work on time, he asserted that he was not too ill to report to duty. Rather, prior to going to bed he made the decision to not set his alarm clock despite the fact that he had been told to report to work at 0630 hours.

In regard to the failure to pay a just debt to Security Finances Corporation, the appellant informed the judge that his first payment of $17.54 was due on 8 April 2004 and monthly payments were due on the 8th of each subsequent month through September 2004. He then told the judge that the check for the initial payment bounced and he made no payments in May, June, or July. He was placed in pretrial confinement on 26 July 2004 and made no claim at trial that his pay was cut off at that point. On appeal, he simply asserts that he was "unable to make payments on his loan or make other alternative arrangements once he was placed in pretrial confinement." The appellant made no such claim during the providence inquiry. When the military judge asked, "Can you tell me why you didn't make the payments," the appellant replied, "No, Sir."

Considering the entire record, and paying special attention to the providence inquiry and the stipulation of fact, we find no "'substantial basis' in law [or] fact for questioning the guilty plea." *See United States v. Milton*, 46 M.J. 317, 318 (C.A.A.F. 1997) (quoting *Prater*, 32 M.J. at 436). We hold that the military judge did not abuse his discretion by accepting the appellant's guilty plea to either offense. *See Eberle*, 44 M.J. at 374.

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

THOMAS T. CRADDOCK, SSgt, USAF
Court Administrator