UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman BRIAN H. LEWIS
United States Air Force

ACM 36401

25 August 2006

Sentence adjudged 14 June 2005 by GCM at Langley Air Force Base, Virginia. Military Judge: Christopher A. Santoro (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 13 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Major N. Anniece Barber, and Captain John S. Fredland.

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

Before
ORR, JACOBSON, and THOMPSON
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignment of error, and the government's answer. The appellant pled guilty to divers uses of cocaine, psilocybin mushrooms, and marijuana, one use of 3, 4 methylenedioxymethamphetamine; commonly known as "ecstasy," possession of cocaine and psilocybin mushrooms with intent to distribute, divers distribution of cocaine, introduction of psilocybin mushrooms onto an installation under control of the armed forces, and distribution of psilocybin mushrooms; all in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. A military judge, sitting alone as a general court-martial, sentenced the appellant to a bad-conduct discharge, confinement for 17 months, and a reduction to E-1. The convening authority, in accordance with the pretrial agreement, approved the findings and only so much of the adjudged sentence as called for a bad-conduct discharge, confinement for 13 months, and reduction to E-1. The appellant now contends his plea of guilty to Specification 2 of the

Charge, the divers distribution of cocaine offense, was improvident. We disagree and 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, 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)). Article 45(a), UCMJ, 10 U.S.C. § 845(a), 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, 328-29 (C.A.A.F. 1996). 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)).

The appellant in the case sub judice argues that while the providence inquiry "clearly established" that the appellant distributed cocaine on one occasion, it is "murkier" on the circumstances of any other distributions of cocaine. The appellant concedes, however, that the stipulation of fact clearly described a second distribution. The appellant further concedes that he made reference to distributing cocaine to "other people" in the portion of his providence inquiry that discussed the possession with intent to distribute specification, and that he replied "[y]es, sir" in response to a question from the military judge that repeated the language of the specification, including the word "divers."

While we agree that the providence inquiry could have been more detailed in regard to a second distribution of cocaine, we find that it is adequate and is not inconsistent with a plea of guilty to divers distribution. Any lack of clarity in the providence inquiry is clearly resolved in the stipulation of fact, which describes two distinct distributions of cocaine. The military judge extensively discussed the stipulation of fact with the appellant. The judge asked the appellant if he had reviewed and signed the stipulation, asked if he had entered into the stipulation voluntarily, and explained how the stipulation would be used during the trial. The judge then asked the appellant to review the stipulation again and affirm that he understood it. The appellant agreed that the contents of the stipulation were true and accurate. We find that this inquiry demonstrated that the appellant knowingly and voluntarily admitted to distributing cocaine on divers occasions. The stipulation enhances and explains the appellant's providence inquiry, and does not contradict it.

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) (citing *Prater*, 32 M.J. at 436). We hold that the military judge did not abuse his discretion by accepting the guilty plea. *See Eberle*, 44 M.J. at 375.

The 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

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator