

**UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

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**UNITED STATES**

**v.**

**Airman MICHAEL J. MACALUSO, JR.  
United States Air Force**

**ACM 37787**

**30 April 2012**

Sentence adjudged 8 September 2010 by GCM convened at Altus Air Force Base, Oklahoma. Military Judge: David S. Castro (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 30 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for the Appellant: Major Michael S. Kerr; Captain Nathan A. White; and Dwight H. Sullivan, Esquire.

Appellate Counsel for the United States: Colonel Don M. Christensen and Gerald R. Bruce, Esquire.

Before

**ORR, GREGORY, and WEISS**  
Appellate Military Judges

This opinion is subject to editorial correction before final release.

**PER CURIAM:**

A general court-martial composed of military judge alone convicted the appellant pursuant to his pleas of unlawful entry, burglary, theft, false official statement, methamphetamine use, and passing bad checks in violation of Articles 107, 112a, 121, 129, and 134, UCMJ, 10 U.S.C. §§ 807, 912a, 921, 929, 934. The court sentenced the appellant to a bad-conduct discharge, confinement for 30 months, forfeiture of all pay and allowances, and reduction to E-1. A pretrial agreement capped confinement at 36 months, and the convening authority approved the sentence adjudged. The appellant argues that the Article 134, UCMJ, unlawful entry and bad check specifications fail to state an offense because neither alleges the terminal element.

The appellant did not challenge the sufficiency of the specifications at trial and entered pleas of guilty to both specifications under the Article 134, UCMJ, charge. The military judge advised the appellant of the elements of each offense to include the terminal elements of both specifications. The appellant acknowledged understanding all the elements, and explained to the military judge how unlawfully entering the dormitory room of another Airman and passing over \$2,400.00 in worthless checks to the Army and Air Force Exchange Service were prejudicial to good order and discipline as well as service discrediting.

Failure to allege the terminal element of an Article 134 offense is error but, in the context of a guilty plea, the error is not prejudicial where the military judge correctly advises the appellant of all the elements and the providence inquiry shows that the appellant understood to what offense and under what legal theory he was pleading guilty. *United States v. Ballan*, No. 11-0413/NA, slip op. at 14, 18-19 (C.A.A.F. 1 March 2012); *see also United States v. Watson*, 70 M.J. 54 (C.A.A.F. 2012). As in *Ballan*, the appellant here suffered no prejudice to a substantial right: he knew under what clause he was pleading guilty and clearly understood how his conduct violated the terminal elements of Article 134, UCMJ.

*Conclusion*

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); *Reed*, 54 M.J. at 41. Accordingly, the approved findings and the sentence are

AFFIRMED.

OFFICIAL



*Angela E. Dixon*

ANGELA E. DIXON, TSgt, USAF  
Deputy Clerk of the Court