

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman WILLIAM A. MOORE
United States Air Force**

ACM 37529

30 April 2010

Sentence adjudged 30 June 2009 by GCM convened at Mountain Home Air Force Base, Idaho. Military Judge: Don M. Christensen (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 245 days, and reduction to E-1.

Appellate Counsel for the Appellant: Major Shannon A. Bennett and Major Darrin K. Johns.

Appellate Counsel for the United States: Colonel Douglas P. Cordova, Colonel George F. May, Lieutenant Colonel Jeremy S. Weber, Captain Jason M. Kellhofer, and Gerald R. Bruce, Esquire.

Before

BRAND, HELGET, and GREGORY
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

In accordance with his pleas, the appellant was found guilty of one specification of absence without leave, one specification of wrongfully using methamphetamine, one specification of larceny, and one specification of breaking restriction, in violation of Articles 86, 112a, 121, and 134, UCMJ, 10 U.S.C. §§ 886, 912a, 921, 934. The approved sentence consists of a bad-conduct discharge, confinement for 245 days, and reduction to E-1.¹

¹ The appellant was found not guilty of one specification of divers wrongful use of methamphetamine, one specification of divers wrongful use of marijuana, and one specification of wrongful introduction of

The issue on appeal, raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), is whether the court-martial lacked jurisdiction over the appellant when he was found not guilty of the charges that initiated the investigation and kept him on active duty after his scheduled administrative discharge date.

Background

The appellant joined the United States Air Force on 3 December 2001, and remained on continuous active duty until the time of his court-martial. The appellant was scheduled to be administratively discharged for misconduct on 29 December 2008. On 15 December 2008, the appellant was apprehended for shoplifting at the Army and Air Force Exchange Service on Mountain Home Air Force Base (AFB), Idaho (ID). While walking around the store, the appellant took an air freshener candle off of the shelf and placed it in his pocket, he saw a knife that was coming out of its package so he placed it in his pocket, and he also placed a belt buckle in his pocket. As he departed the store without paying for the items, he was detained by a store detective. The total cost of the items was approximately \$95.00.

On 22 December 2008, the appellant woke up in his apartment at about 0900. He was scheduled to be at physical training (PT) at 0700. At 1000, he called his first sergeant, Master Sergeant (MSgt) MM, concerning issues he was having with his vehicle and was told to take care of his vehicle. He did not arrive at work until around 1300.

On 23 January 2009, the appellant was restricted to the limits of Mountain Home AFB by his commander for a period of 60 days. On 18 and 19 February 2009, the appellant broke restriction by going off base into the city of Mountain Home, ID. On the night of 19 February 2009, into the early morning hours of 20 February 2009, while at a friend's house in the city of Mountain Home, the appellant purchased a half gram of methamphetamine. He then proceeded to another friend's house and injected the methamphetamine into his arm. On 20 February 2009, the appellant was placed into pretrial confinement.

Jurisdiction

In addition to the offenses to which the appellant pled guilty, the appellant was also charged with the wrongful use of methamphetamine and marijuana on divers occasions between on or about 1 July 2008 and 23 December 2008. On 22 December 2008, MSgt MM called the appellant into his office after the appellant had missed PT earlier that morning. MSgt MM read the appellant his Article 31, UCMJ, 10 U.S.C. §

methamphetamine onto an installation, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The appellant was credited with 130 days for time served in pretrial confinement, and pursuant to Article 58b(b), UCMJ, 10 U.S.C. § 858b(b), the convening authority waived the mandatory forfeitures for a period of six months, release from confinement, or expiration of term of service, whichever is sooner, commencing on 14 July 2009.

831, rights because he did not believe the appellant's reasons for why he did not go to PT. At the time, the appellant was scheduled to be administratively discharged on 29 December 2008. The appellant's commander had decided to take no action concerning the shoplifting incident and to proceed with the pending discharge. At some point during the conversation, MSgt MM noticed that the appellant did not look well and was shaking so he asked the appellant if he was on drugs, meaning using illegal substances. The appellant said he was not on drugs and left MSgt MM's office. Shortly thereafter, the appellant returned and informed MSgt MM that he wanted to self-identify for drug abuse. MSgt MM questioned the appellant and the appellant admitted that he had been using methamphetamine. The following day, MSgt MM took the appellant to the Alcohol and Drug Abuse Prevention and Treatment office and then took him to the Air Force Office of Special Investigations (AFOSI). Instead of being administratively separated, the appellant was held on active duty and charges for the wrongful use of methamphetamine and marijuana were preferred on 24 April 2009.² MSgt MM testified that if the appellant had not told him that he was using methamphetamine, the appellant would have been discharged as scheduled on 29 December 2008.

At trial, the appellant submitted a motion to suppress the statements he made to MSgt MM and AFOSI concerning his drug use because he had self-identified his drug abuse.³ The military judge granted the motion and subsequently found him not guilty of wrongfully using marijuana and methamphetamine in 2008.

“When an accused contests personal jurisdiction on appeal, we review that question of law *de novo*, accepting the military judge's findings of historical facts unless they are clearly erroneous or unsupported in the record.” *United States v. Melanson*, 53 M.J. 1, 2 (C.A.A.F. 2000) (citing *United States v. Owens*, 51 M.J. 204, 209 (C.A.A.F. 1999)).

“Under Article 2(a)(1), UCMJ, [10 U.S.C. § 802(a)(1),] ‘[m]embers of a regular component of the armed forces, including those awaiting discharge after expiration of their terms of enlistment’ are subject to court-martial jurisdiction.” *United States v. Hart*, 66 M.J. 273, 275 (C.A.A.F. 2008) (second alteration in original) (quoting 10 U.S.C. § 802(a)(1)). “It is black letter law that *in personam* jurisdiction over a military person is lost upon his discharge from the service, absent same [sic] saving circumstance or statutory authorization.” *Id.* (quoting *United States v. Howard*, 20 M.J. 353, 354 (C.M.A. 1985)). For purposes of court-martial jurisdiction, three requirements must be met to

² We note nothing in the record indicates the date the appellant's term of service was scheduled to end. According to the charge sheet, the initial date of his current term of service was 13 March 2008 for a period of four years. Although the appellant was scheduled to separate on 29 December 2008, this appears to be an involuntary separation and not due to the completion of his term of service.

³ “Commanders may not use voluntary disclosure against a member in an action under the Uniform Code of Military Justice (UCMJ) or when weighing characterization of service in a separation.” Air Force Instruction 44-121, *Alcohol and Drug Abuse Prevention and Treatment (ADAPT) Program*, ¶ 3.7.1.3 (26 Sep 2001).

accomplish an early discharge: (1) “there must be a delivery of a valid discharge certificate;” (2) “there must be a final accounting of pay made;” and (3) the “appellant must undergo the ‘clearing’ process required under appropriate service regulations to separate him from military service.” *Id.* at 276 (quoting *United States v. King*, 27 M.J. 327, 329 (C.M.A. 1989)).

Rule for Courts-Martial 202(c)(1) provides:

Court-martial jurisdiction attaches over a person when action with a view to trial of that person is taken. Once court-martial jurisdiction over a person attaches, such jurisdiction shall continue for all purposes of trial, sentence, and punishment, notwithstanding the expiration of that person’s term of service or other period in which that person was subject to the code or trial by court-martial. When jurisdiction attaches over a servicemember on active duty, the servicemember may be held on active duty over objection pending disposition of any offense for which held and shall remain subject to the code during the entire period.

The appellant now claims that his court-martial lacked jurisdiction because he was found not guilty of the charges that initiated the investigation and kept him on active duty after his scheduled administrative discharge date. This issue is without merit. The government properly retained the appellant to court-martial him for all of the offenses. The appellant had never been legally separated from the Air Force and the offenses occurred while he was on active duty. Accordingly, the court-martial had jurisdiction to try the appellant for all of the charged offenses.

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); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL



A handwritten signature in blue ink, appearing to read "STEVEN LUCAS", is written over a blue circular stamp.

STEVEN LUCAS, YA-02, DAF
Clerk of the Court