

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

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**UNITED STATES**

**v.**

**Senior Airman JORDAN C. PASSUT  
United States Air Force**

**ACM 37755**

**12 March 2013**

Sentence adjudged 27 August 2010 by GCM convened at MacDill Air Force Base, Florida. Military Judge: W. Thomas Cumbie (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 10 months, and reduction to E-1.

Appellate Counsel for the Appellant: Major Michael S. Kerr; Major Anthony D. Ortiz; Captain Luke D. Wilson; and Dwight H. Sullivan, Esquire.

Appellate Counsel for the United States: Colonel Don M. Christensen; Major Jason M. Kellhofer; Major Rhea A. Lagano; and Gerald R. Bruce, Esquire.

Before

**ROAN, MARKSTEINER, and HECKER  
Appellate Military Judges**

This opinion is subject to editorial correction before final release.

**PER CURIAM:**

A general court-martial composed of a military judge convicted the appellant, consistent with his pleas, of wrongful use of oxycodone, making false official statements, forgery, unauthorized absence, dereliction of duty, making and uttering worthless checks by dishonorably failing to maintain sufficient funds, and falsely altering a military identification card, in violation of Articles 112a, 107, 123, 86, 92 and 134, UCMJ,

10 U.S.C. §§ 912a, 907, 923, 886, 892, 934.<sup>1</sup> The adjudged sentence consisted of a bad-conduct discharge, confinement for 10 months, and reduction to the grade of E-1. The convening authority approved the sentence as adjudged. On appeal, the appellant asserts two errors: (1) the specifications of making and uttering worthless checks and falsely altering a military identification card fail to state offenses because they omit the required terminal element for Article 134, UCMJ, offenses; and (2) he is entitled to relief pursuant to *United States v. Tardif*, 57 M.J. 219 (C.A.A.F. 2002), because of this Court's failure to complete its review of this case within the 18-month processing standard established by *United States v. Moreno*, 63 M.J. 129 (C.A.A.F. 2006). Finding no error that materially prejudices the appellant, we affirm.

### *Sufficiency of the Article 134, UCMJ, Specifications*

Between September and December 2009, the appellant made and uttered multiple checks to Army and Air Force Exchange Service (AAFES) entities on MacDill Air Force Base. The total value of the 14 checks was over \$1,800. Some of those checks were drawn on his own account and some were drawn on his wife's account after he forged her signature, all of which were returned by the bank due to insufficient funds. On multiple other occasions, the appellant would make out a check to other military members and civilians after lying to them about the state of his finances and why he needed them to cash the checks. Relying on his representations, these individuals would cash the checks at the bank on base and provide him with the proceeds. The total value of these 39 checks was over \$2,000, and each was returned by the bank due to insufficient funds. After making and uttering all of these checks, the appellant failed to place or maintain sufficient funds in the underlying bank account for the payment of these checks, and knew the checks would not clear the bank due to insufficient funds. For this conduct, the appellant was charged with 12 specifications of making and uttering worthless checks by dishonorably failing to maintain sufficient funds, in violation of Article 134, UCMJ.

During this same time frame, the appellant also used a sharp object to scratch the social security number and bar code off of the back of his military identification card. He did this so vendors could not scan the card to determine his social security number, and he would then verbally provide a false social security number to mislead the vendors. For this conduct, the appellant was charged with wrongfully and falsely altering the card, in violation of Article 134, UCMJ.

Whether a charged specification states an offense is a question of law that we review de novo. *United States v. Crafter*, 64 M.J. 209, 211 (C.A.A.F. 2006) (citations omitted). The failure to allege the terminal element of an Article 134, UCMJ, offense is error. *United States v. Ballan*, 71 M.J. 28, 34 (C.A.A.F.), *cert. denied*, 133 S. Ct. 43 (2012) (mem.). In the context of a guilty plea, such an error is not prejudicial when the

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<sup>1</sup> The appellant was acquitted of additional specifications under Articles 107, 92, 123a and 134, UCMJ, 10 U.S.C. §§ 907, 892, 923a, 934.

military judge correctly advises the appellant of all the elements and the plea inquiry shows that the appellant understood to what offense and under what legal theory he was pleading guilty. *Id.* at 34-36.

During the plea inquiry in the present case, the military judge advised the appellant of each element of the Article 134, UCMJ, offenses at issue, including the terminal element. The military judge defined the terms “conduct prejudicial to good order and discipline” and “service discrediting” for the appellant. The appellant explained to the military judge how his misconduct was service discrediting, given his fraudulent course of conduct, and that his use of other military members as part of his misconduct was prejudicial to good order and discipline. Therefore, as in *Ballan*, the appellant here suffered no prejudice to a substantial right, because he knew under what clause he was pleading guilty and clearly understood how his conduct violated the terminal element of Article 134, UCMJ.

#### *Post-Trial Processing Delays*

In *Moreno*, our superior court established guidelines that trigger a presumption of unreasonable delay in certain circumstances, including where appellate review is not completed within 18-months of that docketing. *Moreno*, 63 M.J. at 142. Furthermore, Article 66(c), UCMJ, 10 U.S.C. § 866(c), empowers the service courts to grant sentence relief for excessive post-trial delay without the showing of actual prejudice required by Article 59(a), UCMJ, 10 U.S.C. §859(a). *Tardif*, 57 M.J. at 225. In a supplemental assignment of error that specifically states he is not raising a due process challenge to the timing of his appellate review, the appellant cites *Tardif* and argues that, because the delay is facially unreasonable under the *Moreno* standards, we should grant relief to the appellant in the form of disapproval of the bad-conduct discharge. Having considered the totality of the circumstances and the entire record, we conclude that relief is not warranted. *United States v. Harvey*, 64 M.J. 13, 24 (C.A.A.F. 2006); *Tardif*, 57 M.J. at 224.

#### *Conclusion*

The approved findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. Articles 59(a) and 66(c), UCMJ, 10 U.S.C. §§ 859(a), 866(c).

Accordingly, the findings and sentence are

AFFIRMED.



FOR THE COURT

STEVEN LUCAS  
Clerk of the Court

A handwritten signature in blue ink, appearing to read "S. Lucas", is written over a horizontal line. The signature is fluid and cursive.