

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman Basic HEATHER J. CRUTCHFIELD¹
United States Air Force**

ACM S30282

25 June 2004

Sentence adjudged 20 November 2002 by SPCM convened at Dyess Air Force Base, Texas. Military Judge: Daryl E. Trawick (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 6 months, and forfeiture of \$100.00 pay per month for 6 months.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Kyle R. Jacobson, Major Andrew S. Williams, Captain L. Martin Powell, and Captain David P. Bennett.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Captain C. Taylor Smith.

Before

STONE, MOODY, and JOHNSON
Appellate Military Judges

OPINION OF THE COURT

STONE, Senior Judge:

The appellant was convicted, in accordance with her pleas, of absence without authority, wrongful use of cocaine, dishonorable failure to pay a just debt, and breaking restriction, in violation of Articles 86, 112a, and 134, UCMJ, 10 U.S.C. §§ 886, 912a, 934. Her approved sentence consisted of a bad-conduct discharge, confinement for 6 months, and forfeiture of \$100.00 pay per month for 6 months. The appellant argues her plea of guilty to dishonorably failing to pay a just debt is improvident. We agree.

¹ The appellant married after the charges were referred in this case and changed her last name from Quinn to Crutchfield.

The specification at issue involved a \$265.70 debt on the appellant's government credit card. It alleged the debt became due and payable on or about 5 May 2002, and that from on or about 28 May 2002 to on or about 3 September 2002, the appellant dishonorably failed to pay it. The appellant posits a four-pronged attack on the providence of her plea by arguing the military judge: (1) failed to define "dishonorable" conduct, (2) failed to elicit facts from the appellant to establish that her conduct was dishonorable, (3) failed to resolve inconsistencies between the stipulation of fact and her guilty plea, and (4) failed to elicit sufficient facts to establish her conduct was prejudicial to good order and discipline or brought discredit upon the Armed Forces.

I. Law

Article 45(a), UCMJ, 10 U.S.C. § 845(a), provides:

If an accused . . . after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, . . . a plea of not guilty shall be entered in the record, and the court shall proceed as though he had pleaded not guilty.

Further implementing this statutory guidance is Rule for Courts-Martial 910(e) which provides: "The military judge shall not accept a plea of guilty without making such inquiry of the accused as shall satisfy the military judge that there is a factual basis for the plea." Our superior court often refers to this concept as establishing a "factual predicate" that "objectively support[s]" the plea of guilty. *See, e.g., United States v. Jordan*, 57 M.J. 236, 238 (C.A.A.F. 2002).

A military judge's acceptance of a guilty plea is reviewed for an abuse of discretion. *United States v. Eberle*, 44 M.J. 374, 375 (C.A.A.F. 1996). An abuse of discretion is established when the record of trial shows a substantial basis in law and fact for questioning the guilty plea. *Jordan*, 57 M.J. at 238. In making this assessment, we look to whether the military judge explained the elements of each offense to the accused. *United States v. Care*, 40 C.M.R. 247 (C.M.A. 1969). The context of the entire record must be examined to determine whether an accused is aware of the elements, either explicitly or inferentially. *United States v. Redlinski*, 58 M.J. 117 (C.A.A.F. 2003).

In addition to explaining the elements, the record must reflect factual circumstances--as revealed by an accused--that "objectively support" the plea of guilty. *United States v. Bickley*, 50 M.J. 93, 94 (C.A.A.F. 1999); *United States v. Davenport*, 9 M.J. 364, 367 (C.M.A. 1980). In this endeavor, it "is not enough to elicit legal conclusions. The military judge must elicit facts from which the military judge can determine the factual basis for the plea." *United States v. Bullman*, 56 M.J. 377, 381 (C.A.A.F. 2002).

II. Factual Background

The following colloquy between the military judge and the appellant embodies the entire discussion of the challenged specification:

MJ: Airman Crutchfield, I would now like you to look at Specification 1 of Charge III, a violation of Article 134 of the Uniform Code of Military Justice. The elements of the offense in Specification 1 are:

First, that you were indebted to the Bank of America in the sum of \$265.70 for charges and late fees made to your account.

Second, that this debt became due and payable on or about 5 May 2002.

Third, that at Dyess Air Force Base, Texas, from on or about 28 May 2002 to on or about 3 September 2002, you dishonorably failed to pay this debt.

And [F]ourth, that under the circumstances, the conduct that you exhibited was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

MJ: Conduct prejudicial to good order and discipline is conduct which causes a reasonably direct and obvious injury to good order and discipline. Service discrediting conduct is conduct which tends to harm the reputation of the service or lower it in public esteem. Do you understand the elements and definitions as I have read them to you?

ACC: Yes, sir.

MJ: Do you have any questions about any of them?

ACC: No, sir.

MJ: Do you understand your plea of guilty admits that these elements accurately describe what you did?

ACC: Yes, Sir.

MJ: Do you believe and admit that the elements and definitions, taken together, correctly describe what you did?

ACC: Yes, sir.

MJ: At this time, I want you to tell me why you are guilty of the offense listed in Specification 1 of Charge III. Tell me what happened.

ACC: Sir, on or about 5 May '02, I was assigned to the 7th Civil Engineer Squadron at Dyess Air Force Base, Texas. On the 5th of May 2002, the charge on my Bank of America government credit card became due in the amount of \$265.70. When the amount became due, I knew I had an obligation to pay the full amount owed. Between on or about 28 May 2002 to on or about 3 September 2002, I did not make a payment [on] the credit card and continued to owe money on the card. I did not have any justification or lawful reason for not making a payment on the card. I am truly sorry for my behavior.

MJ: And the payment that was due between 28 May 2002 and 3 September 2002 was for charges and fees made to your account?

ACC: Yes, sir.

MJ: Does either counsel believe any further inquiry is required?

[Trial Counsel]: No your Honor.

[Defense Counsel]: No, your Honor.

The parties entered into a stipulation of fact. The relevant paragraphs read as follows:

In May 2002 SMSgt Charles S. Cleveland, 7th Civil Engineer Squadron, Dyess Air Force Base, Texas, the Accused's then acting first sergeant, became aware that the Accused's government credit card bill was overdue. SMSgt Cleveland contacted the Accused and told her to pay her bills. *The Accused told SMSgt Cleveland that she was not getting paid so she could not pay her bills.*

....

The Accused dishonorably failed to pay the Bank of America in the sum of \$265.70 for charges and late fees made to her account. The balance became due and payable on or about 5 May 2002, and from between on or about 28 May 2002 to on or about 3 September 2002, the Accused dishonorably failed to pay this debt. Under the circumstances, AB Crutchfield's conduct

was to the prejudice of good order and discipline in the Armed Forces, or was of a nature to bring discredit upon the Armed Forces.

(Emphasis added.)

III. Analysis

For the following reasons, we conclude there is a substantial basis in law and fact to question the appellant's plea to this charge. First, the military judge failed to define the term "dishonorable conduct" for the appellant, leaving open the question of whether the appellant understood the meaning of that element. Moreover, the military judge failed to elicit information from the appellant to establish a factual predicate for dishonorableness, i.e., facts indicating that the appellant's failure to pay was characterized by "deceit, evasion, false promises, or other distinctly culpable circumstances indicating a deliberate nonpayment or grossly indifferent attitude." See *Manual for Courts-Martial, United States (MCM)*, Part IV, ¶ 71(c) (2002 ed.); *United States v. Smith*, 8 M.J. 779, 780 (A.F.C.M.R. 1980). Instead, the military judge relied solely on the appellant's rote recitation of the elements of the offense and the corresponding legal conclusions set forth in the stipulation of fact. See *Bullman*, 56 M.J. at 382.

Additionally, the military judge did not resolve the issue raised by the stipulation of fact indicating the appellant "was not getting paid so she could not pay her bills." If true, this information suggests a possible basis for not paying her government credit card debt. It also suggests she was not evasive or deceitful since she shared this information with her first sergeant. These circumstances are strikingly similar to those found in *Bullman*, where the appellant stipulated, "If I would have had the cash, I would have made the payments." *Id.* at 380. Our superior court held that this was inconsistent with the appellant's plea of guilty.

Finally, the case at bar fails because the military judge did not establish a factual predicate for concluding that the appellant's conduct was prejudicial to good order and discipline or of a nature to bring discredit upon the armed forces. In *Jordan*, our superior court set aside a conviction under Article 134, UCMJ, where the appellant simply answered, "Yes, sir," to questions the military judge asked him during the providence inquiry to determine whether or not the appellant's conduct was prejudicial to good order and discipline or service discrediting. *Jordan*, 57 M.J. at 239. Although the military judge in the present case expressly listed and defined this element, he did not elicit a factual basis for the ultimate legal conclusion. Likewise, the stipulation of fact is devoid of any objective facts that support a conclusion that the appellant's failure to pay her debt was prejudicial to good order and discipline or service discrediting.

IV. Remedy

The purpose of the providence inquiry is to assure the trial and appellate courts that there is a factual basis for the guilty plea and the appellant understands the nature, meaning, and effect of his or her plea. For the reasons set forth above, we hold that the appellant's guilty plea to this offense was improvident. We therefore set aside the findings as to Specification 1 of Charge III.

Having set aside a finding, we must determine whether to reassess the sentence or remand the case for a sentencing rehearing. Our superior court has determined that this Court may reassess sentences to correct error under certain circumstances. In *United States v. Doss*, 57 M.J. 182, 185 (C.A.A.F. 2002), the analysis was summarized as follows:

In *United States v. Sales*, 22 MJ 305 (CMA 1986), this Court set out the rules for sentence reassessment by a Court of Criminal Appeals. If the court can determine that, absent the error, the sentence would have been at least of a certain magnitude, then it may cure the error by reassessing the sentence instead of ordering a sentence rehearing. *Id.* at 307. A sentence of that magnitude or less "will be free of the prejudicial effects of error." *Id.* at 308. If the error at trial was of constitutional magnitude, then the court must be satisfied beyond a reasonable doubt that its reassessment cured the error. *Id.* at 307. If the court "cannot reliably determine what sentence would have been imposed at the trial level if the error had not occurred," then a sentence rehearing is required. *Id.*

Considering the circumstances of this case, we find that we can reliably reassess the sentence in accordance with the established criteria. We note that the maximum possible punishment for the offenses now before the Court is exactly the same as it was before the military judge who sentenced the appellant: a bad-conduct discharge, confinement for 1 year, forfeiture of two-thirds pay per month for 12 months, and reduction to the grade of E-1. Moreover, even if the challenged specification had not been considered at trial, the sentencing evidence at trial most likely would not have changed significantly. Finally, the most serious of the charges the appellant faced--use of cocaine--remains. We hold that, absent the offense involving dishonorable failure to pay a just debt, the sentence would have at least consisted of a bad-conduct discharge, confinement for 5 months, and forfeiture of \$100.00 pay per month for 5 months.

V. Conclusion

The findings, as modified, and the sentence, as reassessed, are correct in law and fact and no error prejudicial to the appellant's substantial rights 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, as modified, and the sentence, as reassessed, are

AFFIRMED.

OFFICIAL

FELECIA M. BUTLER, TSgt, USAF
Chief Court Administrator