UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class JAMARIO C. SNOW
United States Air Force

ACM S31496

24 February 2009

Sentence adjudged 13 May 2008 by SPCM convened at Lackland Air Force Base, Texas. Military Judge: William M. Burd (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 5 months, forfeiture of $898.00 pay per month for 5 months, and reduction to E-1.

Appellate Counsel for the Appellant: Colonel Raymond J. Hardy, Jr., Major Shannon A. Bennett, and Major Lance J. Wood.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Jeremy S. Weber, and Major Nicole P. Wishart.

Before

FRANCIS, HEIMANN, and THOMPSON
Appellate Military Judges

OPINION OF THE COURT

THOMPSON, Judge:

Consistent with the appellant's pleas, a military judge sitting as a special court-martial convicted him of one charge and specification of wrongful distribution of marijuana on divers occasions and one charge and specification of disorderly conduct, in violation of Articles 112a and 134, UCMJ, 10 U.S.C. §§ 912a, 934. The adjudged and approved sentence consists of a bad-conduct discharge, confinement for 5 months, forfeiture of $898.00 pay per month for 5 months, and reduction to E-1. The appellant asserts that his plea to the charge and specification of disorderly conduct was improvident in that his plea did not establish that his 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. We find to the contrary.

Background

During the guilty plea inquiry, the military judge admitted a stipulation of fact signed by the appellant, which outlined the facts surrounding the offenses with which the appellant was charged and to which he pled guilty. Two paragraphs of the stipulation of fact cover the details surrounding the disorderly conduct charge. The first paragraph outlined the facts of the disorderly conduct, which consisted of the appellant's fight with another airman and the circumstances surrounding that fight.[1] The second paragraph stated that on 7 April 2008, the appellant was disorderly, and such conduct was to the prejudice of good order and discipline in the armed forces. Further, it stated that no person forced the appellant to be disorderly and that he chose to do so of his own free will. The appellant confirmed that these facts were true at his court-martial.

The military judge discussed the elements and definitions of disorderly conduct with the appellant and explained what was meant by conduct that is prejudicial to good order and discipline and by conduct that is service discrediting. The military judge also explained what constitutes disorderly conduct. The appellant told the military judge he understood the elements and definitions and had no questions.

The military judge then asked the appellant to explain why he was guilty of disorderly conduct. The following colloquy occurred:

> [App]: Sir, about around the time I was in confinement -- sorry. I was in Transition Flight, one day we were walking back from the dining facility, it was around 5:30, six o'clock in the afternoon. And we were all joking around in formation on our way back to Transition Flight.
>
> And at the time -- it started out with us joking around, everybody laughing, everybody starting to get into it. And myself and Airman Basic [F] started kind of joking on each other. And everyone else was laughing in the background kind of. And Airman [F] kind of got, started to get angry at things that I was saying to him, and at the time he turned around and just pushed me down. I fell down the hill into like a ditch.
>
> And I didn't think any -- nothing crossed my mind to walk away or just not react to it. I immediately got up and just punched him in the face.

[1] In addition to the facts related during the *Care* inquiry, *United States v. Care*, 40 C.M.R. 247 (C.M.A. 1969), the stipulation of fact stated the appellant was in uniform when the altercation occurred, it was witnessed by several airmen, and the appellant was taken to the on-base hospital for treatment of a quarter-inch long laceration to his upper right lip.

And after that it kind of just went downhill from there. He started swinging back and we got into a big scuffle. And in the process of me trying to pick him up, I ended up kneeing myself in the lip up and my tooth went through my top lip and blood was everywhere.

And at this -- when everyone saw this happening, they started to kind of break the fight up. And due to my anger and frustration I started yelling out stuff that I know I shouldn't have said. I was -- just got mad, heated at the moment. I was in pain. And I said to him that he better not sleep that night -- we were roommates -- and I said to him that he better not sleep that night or he was dead. And all of that was out of anger.

. . . .

MJ: That other guy, the guy that pushed you down, he started this?

[App]: Yes, sir. But it could have been resolved at that. I could have easily walked away and not retaliated. But I did it anyway.

MJ: So did you think you were acting in self-defense?

[App]: No, sir, I wouldn't call it self-defense.

. . . .

[App]: Not so much defending myself, physically, but kind of defending my pride because I got up and I started the fistfight part of it, the fight, instead of resolving it at a lower level and just walking away.

MJ: Do you think you had any justification or excuse for engaging in the behavior that you described?

[App]: No, sir.

MJ: You're admitting that that behavior was disorderly as I defined it for you earlier?

[App]: Yes, sir.

The military judge did not ask the appellant to describe why his conduct was prejudicial to good order and discipline or was service discrediting. The appellant asserts that the responses provided by him during the guilty plea inquiry do not establish a factual basis to support a finding that the conduct was either prejudicial to good order and

discipline or was service discrediting. The appellant requests this Court either set aside the conviction of the charge of disorderly conduct and order a rehearing on sentencing or dismiss the charge and reassess the sentence.

Discussion

We will not set aside a guilty plea on appeal unless there is "a 'substantial basis' in law and fact for questioning the guilty plea." *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991). A military judge's decision to accept a guilty plea is reviewed for an abuse of discretion. *United States v. Inabinette*, 66 M.J. 320, 322 (C.A.A.F. 2008). In contrast, questions of law arising during or after the plea inquiry are reviewed de novo. *Id.* If the "factual circumstances as revealed by the accused himself objectively support that plea," the factual predicate is established. *United States v. Faircloth*, 45 M.J. 172, 174 (C.A.A.F. 1996). We consider the entire record in conducting our review. *Inabinette,* 66 M.J. at 322; *United States v. Johnson*, 42 M.J. 443, 445 (C.A.A.F. 1995).

The appellant cites as authority the decision by our superior court in *United States v. Jordan*, 57 M.J. 238 (C.A.A.F. 2002). We note that, unlike *Jordan,* this appellant signed a stipulation of fact and told the military judge that he agreed with everything in the stipulation of fact. *Cf. Jordan*, 57 M.J. at 237. Included within the stipulation of fact was a statement by the appellant that his disorderly conduct was prejudicial to good order and discipline in the military. *See United States v. Amador*, 61 M.J. 619, 623 (A.F. Ct. Crim. App. 2005) (distinguished from *Jordan* because the appellant signed a stipulation of fact and the military judge elicited sufficient facts to establish a factual predicate for the guilty plea), *rev. denied*, 63 M.J. 183 (C.A.A.F. 2006).

Additionally, unlike *Jordan,* the military judge elicited sufficient facts from the appellant to establish a factual basis for his guilty plea. *Id.* The element of conduct prejudicial to good order and discipline was clearly met. The appellant was in uniform, marching back to his squadron in formation when the disorderly conduct occurred. The appellant admitted that he started the fistfight with a fellow airman. The altercation was on base and in front of fellow airmen who became involved in breaking up the fight. The appellant threatened his roommate and told him "he better not sleep or he was dead." Finally, as a result of the disorderly conduct, the appellant injured himself and required emergency medical attention. It is not fatal to the guilty plea that the military judge did not later ask the appellant to specifically describe how the conduct was prejudicial to good order and discipline or how it was service discrediting. The appellant had already described his disorderly conduct and the facts and circumstances surrounding it. This testimony established the element of prejudice to good order and discipline in the military.

The military judge did not abuse his discretion. Upon review of the entire record, including the stipulation of fact and the detailed narrative provided by the appellant, we find there is not a substantial basis in law or fact to question the guilty plea.

Conclusion

The approved findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred.[2] Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v. Reed,* 54 M.J. 37, 41 (C.A.A.F. 2000). The approved findings and sentence are

AFFIRMED.

OFFICIAL

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

[2] We note the court-martial order incorrectly reflects the Additional Charge as Charge II. A corrected court-martial order should be accomplished.