UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman WADE STODDARD
United States Air Force

ACM S31099

17 October 2007

Sentence adjudged 9 February 2006 by SPCM convened at Al Udeid Air Base, Qatar. Military Judge: Adam Oler (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 6 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Major John N. Page III.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, Captain Jefferson E. McBride, and Captain Jamie L. Mendelson.

Before

WISE, BRAND, and HEIMANN
Appellate Military Judges

PER CURIAM:

In accordance with his pleas, the appellant was convicted of one specification of conspiring to steal and sell military property valued over $500.00, one specification of making a false official statement, one specification of selling military property valued over $500.00, and one specification of larceny of military property valued over $500.00, in violation of Articles 81, 107, 108, and 121, UCMJ, 10 U.S.C. §§ 881, 907, 908, 921. The approved sentence consists of a bad-conduct discharge, confinement for 6 months, and reduction to E-1.

The issues on appeal are: 1) Whether the appellant's pleas to Charge I, II, and III, offenses involving military property of a value greater than $500.00, are provident with respect to the value of the military property; and 2) Whether the appellant's sentence is inappropriately severe where the record indicates the government placed minimal value in the military property in question. Both issues were raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

Background

Over a period of a couple months, the appellant stole computer equipment, over 500 items, which belonged to the Air Force. He then sold some of the equipment on EBay for a gain in excess of $9,000.00. The equipment, available to "harvest" and use to fix other government computers but not available for individual use or resale, was slated to be turned into Defense Reutilization and Marketing Office (DRMO) where its value would decrease to about $0.15 per pound of scrap. The appellant pled providently to his actions. The trial judge went to great lengths to explore the issue of the value of the military property and ensure the appellant was certain the property was valued in excess of $500.00.

Discussion

In determining whether a guilty plea is provident, the test is whether there is a "substantial basis in law and fact for questioning the guilty plea." *United States v. Jordan*, 57 M.J. 236, 238 (C.A.A.F. 2002) (citing *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991)). In order to establish an adequate factual basis for a guilty plea, the military judge must elicit "factual circumstances as revealed by the accused himself [that] objectively support that plea[.]" *Jordan*, 57 M.J. at 238 (quoting *United States v. Davenport*, 9 M.J. 364, 367 (C.M.A. 1980)). The providency inquiry must reflect the accused understood the nature of the prohibited conduct. *United States v. Sapp*, 53 M.J. 90, 92 (C.A.A.F. 2000). A military judge must explain the elements of the offense and ensure that a factual basis for each element exists. *United States v. Barton*, 60 M.J. 62, 64 (C.A.A.F. 2004) (citing *United States v. Faircloth*, 45 M.J. 172, 174 (C.A.A.F. 1996)). We review a military judge's decision to accept a guilty plea for an abuse of discretion. *United States v. Eberle*, 44 M.J. 374, 375 (C.A.A.F. 1996) (citing *United States v. Gallegos*, 41 M.J. 446 (C.A.A.F. 1995)).

After reviewing the record of trial, the post-trial submissions by counsel, and carefully considering the appellant's assertion, we conclude the appellant's pleas were provident, and the military judge did not abuse his discretion in accepting those pleas.

We "may affirm only such findings of guilty and the sentence or such part or amount of the sentence, as [we find] correct in law and fact and determine[], on the basis of the entire record, should be approved." Article 66(c), UCMJ, 10 U.S.C. § 866(c). We

assess sentence appropriateness by considering the particular appellant, the nature and seriousness of the offense, the appellant's record of service, and all matters contained in the record of trial. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982). Our duty to assess the appropriateness of a sentence is "highly discretionary." *United States v. Lacy*, 50 M.J. 286, 287 (C.A.A.F. 1999). The responsibility for clemency, however, "was placed by Congress in [the convening authority's] hands." *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988). We have given individualized consideration to this particular appellant and carefully reviewed the facts and circumstances of this case. We conclude that the appellant's sentence is not inappropriately severe.

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

AFFIRMED.

OFFICIAL

STEVEN LUCAS, DAF
Clerk of the Court