UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class BRENDA L. TOLLEFSON
United States Air Force

ACM S31092

24 January 2008

Sentence adjudged 16 February 2006 by SPCM convened at Robins Air Force Base, Georgia. Military Judge: Jennifer A. Whittier (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 1 month, reduction to E-1, and forfeiture of $500.00 pay for two months.

Appellate Counsel for the Appellant: Captain Griffin S. Dunham.

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

Before

SCHOLZ, JACOBSON, and THOMPSON
Appellate Military Judges

OPINION OF THE COURT

This opinion is subject to editorial correction before final release.

JACOBSON, Senior Judge:

The appellant was found guilty, in accordance with her pleas, of dereliction of duty, making a false official statement, obtaining services under false pretenses (under an aiding/abetting theory), and wrongfully loaning her military identification card to an unauthorized person in violation of Articles 92, 107, and 134, UCMJ, 10 U.S.C. §§ 892, 907, 934. The military judge, sitting alone as a special court-martial, sentenced the appellant to a bad-conduct discharge, confinement for 1 month, forfeitures of $500 pay per month for two months, restriction for two months, hard labor without confinement for three months, and reduction to E-1. The convening authority approved the findings and only so much of the sentence as provided for a bad-conduct discharge, confinement for 1

month, reduction to E-1, and forfeiture of "$500 pay for two months." On appeal, the appellant asserts three assignments of error. Finding merit in one of the three, we order the Convening Authority's Action be corrected and affirm the findings and sentence.

In the appellant's only meritorious assignment of error, she asserts the Convening Authority's Action is ambiguous. She argues the phrase "forfeiture of $500 pay for two months" should be construed to mean the Convening Authority meant to approve a total of $500 in forfeitures rather than the "$500 forfeiture of pay *per month* for two months" adjudged at trial. Government counsel concedes the Action is ambiguous, but recommends we correct the ambiguity by ordering the addition of the words "per month" in the Action.

We review whether post trial processing was properly completed de novo. *United States v. Sheffield*, 60 M.J. 591, 593 (A.F. Ct. Crim. App. 2004) (citing *United States v. Kho*, 54 M.J. 63 (C.A.A.F. 2000)).

Despite the ambiguity, neither the government nor the appellant urge us to return the record to the convening authority for new action. In the interests of judicial economy, we agree that such a measure is unnecessary and find that the ambiguity is appropriately corrected at this level. *See United States v. Ruppel*, 45 M.J. 578, 588-589 (A.F. Ct. Crim. App. 1997). In considering how to correct the ambiguity, however, we disagree with the government's assertion that there is no indication that the convening authority intended to go against the advice of the Staff Judge Advocate's Recommendation (SJAR), which recommended approval of the sentence as adjudged. To the contrary, despite the Staff Judge Advocate's advice, the convening authority did not approve the adjudged restriction or hard labor. Thus, we cannot be sure the convening authority intended to approve the entire amount of the adjudged forfeitures. We therefore resolve the ambiguity in favor of the appellant and approve forfeitures of $500. *See United States v. Gragg*, 10 M.J. 286, 288 n.1 (C.M.A. 1981).

The appellant's remaining assignments of error both attack the providency of her guilty plea. We have examined the record of trial, the appellant's brief, and the government's reply thereto. We will not set aside a plea of guilty unless there is a "substantial basis in law and fact for questioning the guilty plea." *United States v. Eberle*, 44 M.J. 374, 375 (C.A.A.F. 1996) (quoting *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991)). We review a military judge's decision to accept a guilty plea for an abuse of discretion. *United States v. Simmons*, 63 M.J. 89, 92 (C.A.A.F. 2006). After a careful review of the record, paying special attention to the judge's colloquy with the appellant pursuant to *United States v. Care*, 40 C.M.R. 247 (C.M.A. 1969), we find no basis in law or fact for questioning the appellant's plea and hold the military judge did not abuse her discretion in accepting the plea. The appellant's assignments of error asserting the contrary are without merit.

Conclusion

Preparation of a corrected action and court-martial order, omitting the words "for two months" after the words and figures "$500 pay" is ordered. In light of this corrective action, the 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 findings and sentence are

AFFIRMED.

OFFICIAL

STEVEN LUCAS, GS-11, DAF
Clerk of the Court