UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman JEREMY G. TRIPLETT
United States Air Force

ACM 34604

20 June 2002

Sentence adjudged 22 May 2001 by GCM convened at McChord Air Force Base, Washington. Military Judge: Harvey A. Kornstein (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 6 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Lieutenant Colonel Timothy W. Murphy, and Major Patricia A. McHugh.

Appellate Counsel for the United States: Colonel Anthony P. Dattilo, Lieutenant Colonel Lance B. Sigmon, and Major Cheryl D. Lewis.

Before

SCHLEGEL, ROBERTS, and PECINOVSKY
Appellate Military Judges

OPINION OF THE COURT

ROBERTS, Judge:

The appellant was convicted, pursuant to his plea, of wrongfully using cocaine on divers occasions, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The approved sentence includes a bad-conduct discharge, confinement for 6 months, forfeiture of all pay and allowances, and reduction to E-1. The appellant avers on appeal that his plea is improvident because the trial judge failed to elicit facts to support that the appellant's uses of cocaine were wrongful. We find the appellant's assigned error to be without merit and affirm.

Before addressing the appellant's assertions that his plea was improvident, we note that he pled guilty to the offense he now challenges on appeal. In doing so, he conceded

this factual issue at trial and relieved the government of its burden to introduce all its available proof on this issue. As noted by our superior court, this Court will not now countenance "post-trial speculation" as to this factual issue. *United States v. Grimm*, 51 M.J. 254, 257 (1999). Our superior court more recently held, "[I]n the guilty-plea context, the Government does not have to introduce evidence to prove the elements of the charged offense beyond a reasonable doubt; instead, there need only be "factual circumstances" on the record "which 'objectively' support" the guilty pleas. . . ." *United States v. James*, 55 M.J. 297, 300 (2001) (citing *United States v. Shearer*, 44 M.J. 330, 334 (1996)).

During the providence inquiry, the trial judge informed the appellant of the "four" elements of the offense to which the appellant pled guilty.[1] One of the elements included the following definition of wrongful: "Use of a controlled substance is wrongful if it is without legal justification or authorization." The trial judge specifically asked the appellant if he understood the definition of wrongful, and the appellant replied, "Yes, sir." The appellant also said that the understood that his guilty plea admitted each of the elements and he said that the elements were correct in describing what happened. Furthermore, the appellant admitted in the stipulation of fact which he signed, that he had no legal justification or authorization to use cocaine, and that his use was not done pursuant to a legitimate law enforcement activity. The record of trial is also clear that the appellant understood the consequences of his guilty plea.

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. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

FELECIA M. BUTLER, TSgt, USAF
Chief Court Administrator

[1] We remind practitioners that there are only two elements for drug offenses. *United States v. Green*, 55 M.J. 76 (2001), *cert. denied*, 122 S. Ct. 469 (2001); *Manual for Courts-Martial, United States*, Part IV, ¶ 37b(2), (2000 ed.).