UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman Basic LUCAS S. TRUSTY
United States Air Force

ACM S30777

27 October 2005

Sentence adjudged 10 November 2004 by SPCM convened at Scott Air Force Base, Illinois. Military Judge: Kevin P. Koehler (sitting alone).

Approved sentence: Bad-conduct discharge and confinement for 75 days.

Appellate Counsel for Appellant: Lieutenant Colonel Mark R. Strickland, Major James M. Winner, Captain Christopher S. Morgan, and Captain John S. Fredland.

Appellate Counsel for the United States: Lieutenant Colonel Gary F. Spencer.

Before

ORR, JOHNSON, and JACOBSON
Appellate Military Judges

PER CURIAM:

A military judge sitting as a general court-martial convicted the appellant, pursuant to his pleas, of one specification of attempted larceny and one specification of wrongfully soliciting another airman to burn an automobile with the intent to defraud the insurer, in violation of Articles 80 and 134, UCMJ, 10 U.S.C. §§ 880, 934. The military judge sentenced him to a bad-conduct discharge and confinement for 3 months. The convening authority approved the findings and reduced the confinement portion of the sentence to 75 days in accordance with a pretrial agreement.

The case is before this Court for review under Article 66, UCMJ, 10 U.S.C. § 866. The appellant submitted the case to us on its merits. While asserting no error or prejudice, the appellant asked this Court to correct the findings as to the Specification of

Charge I to reflect the facts as they were developed at trial.[1] Because the appellant pled guilty to the specification as charged, we must now determine whether the appellant's guilty plea to wrongful solicitation was provident. The test is whether there is a "'substantial basis' in law and fact for questioning the guilty plea." *United States v. Milton*, 46 M.J. 317, 318 (C.A.A.F. 1997) (quoting *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991)). 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) (quoting *United States v. Davenport*, 9 M.J. 364, 367 (C.M.A. 1980)). 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).

During the providence inquiry, the appellant admitted that he *offered* Airman First Class (A1C) Andrew Straws $200 to burn his car. In response to a question from the military judge, the appellant stated that he never gave the money to A1C Straws. However, the stipulation of fact, charge sheet, and promulgating order all indicate that the appellant committed the offense by *paying* A1C Andrew Straws $200 to burn the appellant's automobile. Because the appellant testified that A1C Straws never received the money, we find a substantial basis to question the appellant's guilty plea. In order to find the appellant guilty of the wrongful solicitation offense as charged in the Specification of Charge I, the military judge must find that the appellant actually gave A1C Straws $200. The appellant clearly stated that he intended to pay A1C Straws out of the proceeds he received from the insurer, United Services Automobile Association (USAA). However, because the appellant did not receive an insurance check from USAA, we are convinced that he never paid A1C Straws the money as alleged. As a result, we hereby modify the finding of guilty as to the Specification of Charge I by excepting the word "paying," substituting therefore the words "offering to pay."

Having disapproved a portion of the findings, we must either return the case for a sentence rehearing or reassess the sentence. In *United States v. Sales*, 22 M.J. 305, 307 (C.M.A. 1986), our superior court held that we may reassess the sentence if we can reliably determine the sentence absent the error. Given the circumstances of this case, we are confident that we can determine the appropriate sentence without conducting a rehearing. Reassessing the sentence on the basis of the error noted, the entire record, and applying the principles set forth in *Sales*, this Court is convinced beyond a reasonable

---

[1] The appellant raises this issue in a footnote to his assignment of errors. We caution counsel that failure to set forth each assignment of error alleged violates the Joint Courts of Criminal Appeals Rules of Practice and Procedure, Rule 15(a) (1 Sep 2000, as amended through 1 Aug 2004). Additionally, Rule 15.1 of the Air Force Court of Criminal Appeals Rules of Practice and Procedure states, "Prior to the Summary of Proceedings, appellate counsel shall insert a Statement of Issues and state seriatim *all* errors assigned in the case." (Emphasis added.) Strict compliance with these rules avoids unnecessary confusion on the part of all participants as to the exact basis of an appellant's appeal and assures a timely and accurate review of the case. This is particularly important for a court of mandatory review.

doubt that the military judge would have imposed no less than a bad-conduct discharge and confinement for 75 days. *See United States v. Doss*, 57 M.J. 182 (C.A.A.F. 2002).

The approved findings, as modified, and the sentence, as reassessed, 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 approved findings, as modified, and the sentence, as reassessed, are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court