UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman PACER A. WEST
United States Air Force

ACM 36903

12 September 2008

Sentence adjudged 24 October 2006 by GCM convened at Davis-Monthan Air Force Base, Arizona. Military Judge: Steven Ehlenbeck.

Approved sentence: Bad-conduct discharge, confinement for 6 months, forfeiture of all pay and allowances for 6 months, fine of $3,000.00 and in the event the fine is not paid, confinement for an additional 3 months, and reduction to E-1.

Appellate Counsel for the Appellant: Lieutenant Colonel Mark R. Strickland, Captain Vicki A. Belleau, Captain Chadwick A. Conn, and Dwight H. Sullivan, Esquire (civilian counsel).

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Lieutenant Colonel John P. Taitt, and Major Matthew S. Ward.

Before

BRAND, FRANCIS, and JACKSON
Appellate Military Judges

PER CURIAM:

Pursuant to his pleas, a military judge found the appellant guilty of ten specifications of selling military property without proper authority and one specification of larceny of military property of a value of more than $500, in violation of Articles 108 and 121, UCMJ, 10 U.S.C. §§ 908, 921. A panel of officers sitting as a general court-martial sentenced the appellant to a bad-conduct discharge, six months confinement, forfeitures of all pay and allowances for six months, a $3,000 fine and three months

contingent confinement if the fine is not paid, and a reduction to the grade of E-1. The convening authority approved the findings and the sentence.

On appeal the appellant asks this Court to set aside his bad-conduct discharge or, in the alternative, his fine and forfeitures of pay and allowances. The basis for his request is that he opines the convening authority erred when he approved a sentence which included a bad-conduct discharge, a fine, and forfeitures when he had previously agreed, through a pretrial agreement (PTA), that the "approved sentence will not exceed twenty-four (24) months of confinement." Finding no error, we affirm.

Discussion

Interpretations of PTAs are questions of law which are reviewed de novo. *United States v. Lundy*, 63 M.J. 299, 301 (C.A.A.F. 2006); *United States v. Acevedo*, 50 M.J. 169, 172 (C.A.A.F. 1999). In interpreting PTAs, this Court looks to the appellant's understanding of the agreement as reflected in the record as a whole. *Lundy*, 63 M.J. at 301. It is imperative that the accused not only know and understand the agreement's impact on the charges and specifications but also know and understand other terms of the agreement. *United States v. Hunter*, 65 M.J. 399, 403 (C.A.A.F. 2008) (quoting *United States v. Felder*, 59 M.J. 444, 445 (C.A.A.F. 2004)).

In this regard, military judges and counsel play a critical role in ensuring the record reflects a clear, shared understanding of the terms of any PTA between an accused and the convening authority. *United States v. Williams*, 60 M.J. 360, 362 (C.A.A.F. 2004). During the appellant's *Care* inquiry, the military judge did an outstanding job exploring the parties understanding of the PTA terms. The appellant, in response to the military judge's PTA inquiry, acknowledged his understanding that: (1) the PTA only limited the amount of confinement that could be approved; (2) other components of the adjudged sentence could be approved; and (3) the convening authority therefore could approve a punitive discharge, reduction in rank, forfeitures, and a fine. Trial counsel and trial defense counsel likewise agreed that the PTA only limited the amount of confinement that could be approved.

Moreover, after the announcement of the sentence, the military judge once again explored this issue with the appellant and counsel, and all agreed that the convening authority could approve the sentence adjudged. Finally, the appellant and trial defense counsel were served with a copy of the staff judge advocate recommendation, a recommendation wherein the staff judge advocate advised the convening authority to approve the sentence adjudged, and given yet another opportunity to raise this as an issue.

Rather than avail himself of the opportunity to raise this issue during trial and during clemency, the appellant waited to raise this issue for the first time on appeal. It would be legally unfitting for this Court to grant the appellant relief after he has received

the benefit of the PTA, the terms of which he clearly knew and understood and had ample opportunity to reject. In short, after a careful review of the record of trial, to include the appellant's post-trial submissions, we conclude the convening authority did not err when he approved the sentence as adjudged.

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, 10 U.S.C. § 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

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