

**UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

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**UNITED STATES**

**v.**

**Airman Basic MARSAHN D. WILSON  
United States Air Force**

**ACM 34621**

**17 July 2002**

Sentence adjudged 17 May 2001 by GCM convened at Sheppard Air Force Base, Texas. Military Judge: Steven A. Hatfield (sitting alone).

Approved sentence: Dishonorable discharge and confinement for 14 months.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Jeffrey A. Vires, Major Marc A. Jones, and Major Bryan A. Bonner.

Appellate Counsel for the United States: Colonel Anthony P. Dattilo, Lieutenant Colonel Lance B. Sigmon, and Captain Steven R. Kaufman.

Before

**YOUNG, BRESLIN, and ROBERTS**  
Appellate Military Judges

**PER CURIAM:**

The appellant pled guilty to being absent without leave from 4 November 2000 to 1 February 2001, distributing marijuana, making a false statement about his identity to civilian police, and fleeing from the attempts of civilian police to apprehend him, in violation of Articles 86, 112a, 134, UCMJ, 10 U.S.C. §§ 886, 912a, 934. The military judge accepted the appellant's guilty pleas and sentenced him to a dishonorable discharge and confinement for 14 months. The appellant claims the prosecution violated his right to speedy trial under Article 10, UCMJ, 10 U.S.C. § 810, and the military judge's sentence was inappropriately severe. We affirm.

## I. Facts

At the completion of his technical training school at Sheppard Air Force Base (AFB), Texas, the appellant was granted leave en route to his new assignment at Luke AFB, Arizona. He went home to Wilmington, Delaware, to visit his family. He failed to report to Luke AFB by his report not later than date of 4 November 2000.

While the appellant was absent without leave (AWOL), the military stopped his pay. Needing to find a way to support his wife and child, the appellant agreed to sell marijuana for a friend. On 27 November 2000, two Wilmington police officers saw the appellant sell marijuana to another person. When the officers tried to apprehend the appellant, he fled. After a pursuit, the officers were able to apprehend the appellant. During a search of the appellant and his jacket, the officers found 15 small plastic bags containing a total of 15.1 grams of marijuana. After being apprehended, the appellant provided the police with a false name. The appellant was released on bail. The appellant eventually terminated his absence from the Air Force by turning himself in at Dover AFB, Delaware, on 1 February 2001.

## II. Article 10, UCMJ, Speedy Trial

Military authorities returned the appellant to Sheppard AFB, and he remained in pretrial confinement until his trial on 17 May 2001, a total of 105 days. The appellant asks this Court to set aside the findings and sentence because the government did not take immediate steps to bring him to trial.

When an accused is placed in pretrial confinement, “immediate steps shall be taken . . . to try him or to dismiss the charges and release him.” Article 10, UCMJ. “The test for assessing an alleged violation of Article 10 is whether the Government has acted with ‘reasonable diligence’ in proceeding to trial.” *United States v. Birge*, 52 M.J. 209, 211 (1999) (citing *United States v. Kossman*, 38 M.J. 258, 262 (C.M.A. 1993)).

The appellant litigated this issue at trial. But, after the judge denied the motion, the appellant elected to enter an unconditional guilty plea to the charges and specifications and argue that such a plea, and his cooperation, warranted a lenient sentence. The appellant waived our consideration of his right to a speedy trial under Article 10 by his unconditional plea of guilty. *United States v. Benavides*, ACM 34454 (A.F. Ct. Crim. App. 14 Jun 2002). See *United States v. Bruci*, 52 M.J. 750, 754 (N.M. Ct. Crim. App. 2000).

## III. The Sentence

The appellant asserts that his sentence to a dishonorable discharge was inappropriately severe when considered against the following factors: his duty

performance; his guilty plea saved the Government the time and expense of a full-blown court-martial; and the trial counsel only argued for a bad-conduct discharge.

This Court may affirm only so much 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). After carefully examining the entire record, we conclude that this experienced military judge's sentence was not inappropriately severe. *See United States v. Snelling*, 14 M.J. 267 (C.M.A. 1982).

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

SHANNON J. KENNEDY, Captain, USAF  
Chief Commissioner