UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman CODY L. WYNCOOP
United States Air Force

ACM 36702

16 February 2007

Sentence adjudged 10 March 2006 by GCM convened at Hurlburt Field, Florida. Military Judge: Bruce S. Ambrose.

Approved sentence: Bad-conduct discharge, confinement for 4 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Major Chadwick A. Conn.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Lieutenant Colonel Robert V. Combs, Major Matthew S. Ward, and Captain Nicole P. Wishart.

Before

BROWN, BECHTOLD, and BRAND
Appellate Military Judges

PER CURIAM:

The appellant was convicted, in accordance with his pleas, of one specification of absence without leave terminated by apprehension, one specification of absence without leave, one specification of failure to go to his appointed place of duty, one specification of wrongful use of cocaine on divers occasions, one specification of wrongful use of methamphetamine, and one specification of wrongful use of Ecstasy, in violation of Articles 86 and 112a, UCMJ, 10 U.S.C. §§ 886, 912a. His approved sentence consists of a bad-conduct discharge, confinement for 4 months, and reduction to E-1.

On appeal, the appellant alleges plain error in that the military judge failed to instruct the members that a fine was an authorized punishment option for the appellant's offenses. We find this issue to be without merit.

At trial, the military judge and counsel discussed on several occasions whether the instruction regarding a fine was warranted, particularly in light of the Discussion to Rule for Courts-Martial 1003(b)(3).[*] All parties agreed it was not. The appellant concedes that the issue was affirmatively waived at trial, but maintains it is plain error.

To find plain error, we must be convinced (1) that there was error, (2) that it was plain or obvious, and (3) that it materially prejudiced a substantial right of the appellant. *United States v. Powell*, 49 M.J. 460, 463-64 (C.A.A.F. 1998). To that end, we must review errors that are asserted on appeal but not raised at trial and determine their impact, if any, on the appellant's "substantial rights." *Powell*, 49 M.J. at 464. Having carefully considered the record, we are not convinced there was error; to the contrary, we are convinced there was not error.

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 findings and sentence are

AFFIRMED.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator

[*] There was no evidence presented that the appellant was unjustly enriched as a result of the offenses for which he was convicted.