

**UNITED STATES NAVY-MARINE CORPS
COURT OF CRIMINAL APPEALS
WASHINGTON, D.C.**

**Before
W.L. RITTER, E.S. WHITE, B.G. FILBERT
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**STEVEN T. MCNAMEE
CORPORAL (E-4), U.S. MARINE CORPS**

**NMCCA 200601379
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 8 March 2006.
Military Judge: LtCol David M. Jones, USMC.
Convening Authority: Commanding Officer, Marine Attack Squadron 211, 3d MAW, MarForPac, Yuma, AZ.
Staff Judge Advocate's Recommendation: Col C.J. Woods, USMC. **Addendum:** Col V.A. Ary, USMC.
For Appellant: CDR Dale Harris, JAGC, USN.
For Appellee: LT Derek Butler, JAGC, USN.

30 October 2007

OPINION OF THE COURT

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.

FILBERT, Judge:

The appellant was tried by a special court-martial composed of a military judge. Pursuant to his pleas, the appellant was convicted of conspiracy, eight specifications of unauthorized absence, disrespect to a superior noncommissioned officer, making a false official statement, three specifications of wrongful use of methamphetamine, and breaking restriction. His offenses violated Articles 81, 86, 107, 112a, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 881, 886, 907, 912a, and 934. The military judge sentenced the appellant to confinement for 167 days, reduction to pay grade E-1, and a bad-conduct discharge.

The convening authority disapproved confinement in excess of four months but otherwise approved the sentence as adjudged.¹

The appellant claims that the military judge's providence inquiry did not establish his guilt of three specifications of unauthorized absence alleged in Additional Charge II. We have carefully examined the record of trial, the appellant's assignment of error, and the Government's response. We conclude the findings and sentence are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant occurred. See Arts. 59(a) and 66(c), UCMJ.

Improvident Pleas

Before accepting a guilty plea, the military judge must find there is a sufficient factual basis to satisfy each and every element of the pled offense. *United States v. Care*, 40 C.M.R. 247, 253 (C.M.A. 1969). The standard of review to determine whether a plea is provident is whether the record reveals a substantial basis in law and fact for questioning the plea. *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991). Such rejection must overcome the generally applied waiver of the factual issue of guilt inherent in voluntary pleas of guilty. *United States v. Dawson*, 50 M.J. 599, 601 (N.M.Ct.Crim.App. 1999).

The appellant contends his guilty pleas to missing eight pretrial restriction musters as alleged in Specifications 2, 3, and 4 of Additional Charge II were improvident. We disagree.

The offense of failure to go to appointed place of duty, as alleged in Specifications 2 through 4 of Additional Charge II, has three elements:

(a) That the appellant's commanding officer appointed a certain time and place of duty for the appellant, that is, pretrial restriction muster at certain times each day at the Marine Attack Squadron 211 hangar;

(b) That the appellant knew of the time and place he was to muster each day;

(c) That the appellant, without authority, failed to go to the appointed place of duty at the times prescribed.

The appellant does not argue the military judge failed to establish the factual basis for any particular element of these

¹ On 11 January 2007, this Court found the convening authority did not consider a defense clemency request prior to taking action on the case. We set aside the convening authority's action of 18 August 2006 and remanded the case for proper post-trial processing in compliance with R.C.M. 1106 and 1107. The appellant does not claim any error concerning the convening authority's second action on the case of 16 April 2007.

specifications. He simply maintains the inquiry was insufficient because the military judge "accelerated" and "condensed" the questioning of the appellant concerning these offenses. Appellant's Brief of 6 Jun 2007 at 3, 5. The record convinces us the military judge established a sufficient factual basis to satisfy each and every element of the these offenses.

A stipulation of fact voluntarily signed by the appellant was admitted into evidence. In this stipulation, the appellant admitted the facts sufficient to satisfy the elements of each of the eight specifications. Record at 17-19; Prosecution Exhibit 2 at 10-11. Additionally, the military judge thoroughly questioned the appellant to establish the factual and legal basis for the appellant's guilty plea to each specification. The appellant's sworn testimony established: (1) he was given a written order from his commanding officer placing him on pretrial restriction on 18 November 2005; (2) the written order advised the appellant of the time and location of the pretrial restriction musters; (3) the appellant read the order and knew he was to report for pretrial restriction muster at the Marine Attack Squadron 211 hangar at the times set forth in each specification; (4) he failed to report for the musters; (5) the appellant could have made the restriction musters if he had wanted; and (6) the appellant had no legal justification or excuse for not making the musters.

During the providence inquiry, the appellant advised the military judge he could not make the muster at 0600 on 9 December 2005 as originally alleged in Specification 1 of Additional Charge II because he was standing duty at the barracks. As a result, the specification was amended at trial to eliminate this muster. Contrary to the argument of the appellant, we find this testimony demonstrates the military judge was actively and thoroughly questioning the appellant regarding his guilty pleas to the three specifications at issue. We also find the remainder of the military judge's providence inquiry concerning these offenses to be attentive and complete. Accordingly, we do not find a substantial basis in law and fact to question the plea. *Prater*, 32 M.J. at 436.

Conclusion

We affirm the findings and sentence, as approved by the convening authority.

Chief Judge RITTER and Judge WHITE concur.

For the Court

R.H. TROIDL
Clerk of Court