

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

**Before
E.E. GEISER, R.G. KELLY, V.S. COUCH
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**RAYMOND L. SAVAGE, Jr.
LANCE CORPORAL (E-3), U.S. MARINE CORPS**

**NMCCA 200700241
GENERAL COURT-MARTIAL**

Sentence Adjudged: 20 October 2006.

Military Judge: LtCol Jeffrey Meeks, USMC.

Convening Authority: Commanding Officer, Marine Corps
Installations West, Camp Pendleton, CA.

Staff Judge Advocate's Recommendation: Col C.J. Woods,
USMC.

For Appellant: CAPT Stephen White, JAGC, USN.

For Appellee: CAPT Thomas J. DeMay, JAGC, USN; LT Justin E.
Dunlap, JAGC, USN.

31 January 2008

OPINION OF THE COURT

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.

COUCH, Judge:

The appellant was convicted, pursuant to his pleas, by a military judge sitting as a general court-martial, of seven specifications of larceny and one specification of burglary, in violation of Articles 121 and 129, Uniform Code of Military Justice, 10 U.S.C. §§ 921 and 929. The appellant was sentenced to confinement for 5 years, reduction to pay grade E-1, forfeiture of all pay and allowances, and a dishonorable discharge. The convening authority approved the findings and the sentence as adjudged, but suspended all confinement in excess of 36 months pursuant to the terms of a pretrial agreement.

After carefully considering the record of trial, the appellant's three assignments of error,¹ and the Government's response, we conclude that the findings and the sentence are correct in law and fact and that no error materially prejudicial to the appellant's substantial rights was committed. Arts. 59(a) and 66(c), UCMJ.

The appellant's guilty pleas reflect his sole responsibility for the theft of over \$18,000 in currency and personal property from his fellow Marines. The appellant broke into the Marines' barracks rooms while they were not in garrison, and gained access to their wall lockers by breaking open the locks with a crowbar. The appellant entered their barracks on five different occasions over a period of 10 months.

In his first two assignments of error, the appellant challenges the providence of his pleas to Additional Charge, Specifications 1 and 4.² At the end of their colloquy as to Specification 1, the military judge asked the appellant whether he considered his conduct to be wrong, to which the appellant replied "No, sir." Record at 47. At the end of the providence inquiry into Specification 4, the military judge asked the appellant whether he believed all of the property he admitted to stealing belonged to Sergeant Yelin. The appellant replied "No, sir." *Id.* at 54. Citing *United States v. Higgins*, 40 M.J. 67 (C.M.A. 1994), the appellant claims that because these two responses were inconsistent with his guilty pleas, it was reversible error for the military judge not to inquire further to resolve the inconsistency. We disagree.

"A military judge's decision to accept a guilty plea is reviewed for an abuse of discretion." *United States v. Shaw*, 64 M.J. 460, 462 (C.A.A.F. 2007)(quoting *United States v. Eberle*, 44

¹ I. APPELLANT'S PLEAS TO ADDITIONAL CHARGE I (sic), SPECIFICATION 1, LARCENY WAS IMPROVIDENT BECAUSE THE APPELLANT'S TESTIMONY THAT HIS CONDUCT WAS NOT WRONGFUL WAS INCONSISTENT WITH HIS GUILTY PLEA AND THE MILITARY JUDGE MADE NOT (sic) ATTEMPT TO RECONCILE THIS INCONSISTENCY.

II. APPELLANT'S PLEAS TO ADDITIONAL CHARGE I (sic), SPECIFICATION 3 (sic) LARCENY WAS IMPROVIDENT BECAUSE THE APPELLANT'S TESTIMONY THAT HE DID NOT BELIEVE SOME OF THE PROPERTY ALLEGED STOLEN BELONGED TO SERGEANT YELIN AS ALLEGED IN THE SPECIFICATION WAS INCONSISTENT WITH HIS GUILTY PLEA AND THE MILITARY JUDGE MADE NOT (sic) ATTEMPT TO RECONCILE THIS INCONSISTENCY.

III. CHARGE II, AND ITS SOLE SPECIFICATION, BREAKING AND ENTERING THE HOTEL COMPANY BARRACKS WITH THE INTENT TO COMMIT LARCENY BETWEEN 19 AND 21 JANUARY 2006 AND ADDITIONAL CHARGE I (sic), SPECIFICATION 1 LARCENY OF VARIOUS MARINES (sic) LIVING IN THE HOTEL COMPANY BARRACKS BETWEEN 19 AND 21 JANUARY 2006 IS AN UNREASONABLE MULTIPLICATION OF CHARGES.

Our review of the record suggests that the appellant intends to challenge Additional Charge, Specification 4 in his second assignment of error, because that is the only offense that refers to Sergeant Yelin.

² Additional Charge, Specification 1 alleges the appellant stole \$2,940.00 worth of property from eleven separate victims. Specification 4 alleges the appellant stole numerous personal items worth \$3,700 from Sergeant Yelin.

M.J. 374, 375 (C.A.A.F. 1996)(citing *United States v. Gallegos*, 41 M.J. 446 (C.A.A.F. 1995)); see also *United States v. Phillippe*, 63 M.J. 307, 309 (C.A.A.F. 2006). A guilty plea will be rejected on appeal only where the record of trial shows a substantial basis in law and fact for questioning the plea. *United States v. Carr*, 65 M.J. 39, 40-41 (C.A.A.F. 2007)(citing *United States v. Harris*, 61 M.J. 391, 398 (C.A.A.F. 2005) and *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991)).

In *United States v. Holmes*, this court recognized the following precedents:

In reviewing the providence of the appellant's guilty pleas, we consider his colloquy with the military judge, as well as any inferences that may reasonably be drawn from it. *Carr*, 65 M.J. at 41 (citing *Hardeman*, 59 M.J. [389,] 391 [(C.A.A.F. 2004)]). A military judge may only accept a guilty plea if there is a factual basis for it, and must reject it if the accused sets up matter inconsistent with the plea or if the plea appears improvident. Art. 45, UCMJ; Rule for Courts-Martial 910(e), Manual for Courts-Martial, United States (2005 ed.); *Phillippe*, 63 M.J. at 309.

65 M.J. 684, 687 (N.M.Ct.Crim.App. 2007). We agree with the appellant that "[a] providence inquiry into a guilty plea must establish, *inter alia*, 'not only that the accused himself believes he is guilty but also that the factual circumstances as revealed by the accused himself objectively support that plea.'" *Higgins*, 40 M.J. at 68. But the next paragraph in *Higgins* is also important:

Once a guilty plea has been accepted as provident, however, it will be set aside on appeal only if the record "contains some 'evidence in "substantial conflict" with' the pleas of guilty. *United States v. Hebert*, 1 MJ 84, 86 (CMA 1975)." *United States v. Stewart*, 29 MJ 92, 93 (CMA 1989). See also *United States v. Prater*, 32 MJ 433, 437 (CMA 1991)(guilty plea not found improvident when record contained "no 'substantial basis'" for the defense asserted on appeal).

Id.

If we were to read only the portion of the record cited by the appellant, we might be inclined to agree with his assertion that the two statements in question were inconsistent with his guilty pleas. The appellant's providence inquiry was fairly intricate due to the numerous items of personal property that he stole, and the numerous victims from whom he stole them; we can easily see how the military judge and the parties missed the

significance of the appellant's two isolated responses.³ However, the remainder of the appellant's providence inquiry and his stipulation of fact provided the military judge with ample evidence that objectively supported the appellant's guilty pleas.⁴

Prior to beginning the providency inquiry, the military judge received a stipulation of fact signed by the appellant that included his admission that, with regards to the property listed in Additional Charge, Specification 1, he "knew that stealing these items was wrongful." Prosecution 1 at 4; see also Appellant's Clemency Letter of 29 Jan 2007. The appellant also admitted that the property alleged in Specification 4 rightfully belonged to Sergeant Yelin. PE-1 at 6. The appellant admitted that he understood everything in the stipulation of fact and that it was true. Record at 15. Before admitting the stipulation of fact into evidence, the military judge explained to the appellant that he would use it to determine "whether or not you are, in fact, guilty," and the appellant agreed to that use. *Id.* at 17.

Upon our review of the record, we see no basis in law or fact for questioning the appellant's guilty pleas. We find that the military judge did not abuse his discretion in accepting the appellant's guilty pleas, and therefore conclude that this assignment of error is without merit.

We have considered the appellant's remaining assignment of error alleging an unreasonable multiplication of charges. In light of *United States v. Quiroz*, 57 M.J. 583, 585-86 (N.M.Ct.Crim.App. 2002)(en banc), *aff'd*, 58 M.J. 183 (C.A.A.F. 2003)(summary disposition), we conclude that the appellant's offenses do not constitute an unreasonable multiplication of charges, and that this assignment of error is also without merit.

Conclusion

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

Senior Judge GEISER and Judge KELLY concur.

For the Court

R.H. TROIDL

³ Once again, we caution military judges to avoid an over-reliance on the use of a series of affirmative answers to leading questions that call for legal conclusions. See *United States v. Jordan*, 57 M.J. 236, 239 (C.A.A.F. 2002).

⁴ We are disturbed that in his brief and assignment of errors, the appellate defense counsel makes no mention of the appellant's stipulation of fact. We remind counsel of his duty of candor to this tribunal.

Clerk of Court