

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

**Before
J.A. MAKSYM, J.R. PERLAK, B.L. PAYTON-O'BRIEN
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**CONLAN I.K. BROWNE
PRIVATE (E-1), U.S. MARINE CORPS**

**NMCCA 201000433
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 25 May 2010.

Military Judge: LtCol Thomas J. Sanzi, USMC.

Convening Authority: Commanding Officer, 3d Assault Amphibian Battalion, 1 St Marine Division, Marine Corps Base, Camp Pendleton, CA.

Staff Judge Advocate's Recommendation: LCDR H.D. Russell, USMCR.

For Appellant: CAPT Diane L. Karr, JAGC, USN.

For Appellee: LCDR Clay G. Trivett, Jr., JAGC, USN; Capt Mark V. Balfantz, USMC.

13 January 2011

OPINION OF THE COURT

**IN ACCORDANCE WITH RUE 18.2, NMCCA RULES OF PRACTICES AND PROCEDURE, THIS
OPINION DOES NOT SERVE AS PRECEDENT.**

PER CURIAM:

A military judge sitting as a special court-martial convicted the appellant, pursuant to his pleas, of two specifications of wrongful use of marijuana in violation of Article 112a, Uniform Code of Military Justice, 10 U.S.C. § 912a. The military judge sentenced the appellant to confinement for sixty days, forfeiture of \$900.00 pay per month for three months, and a bad-conduct discharge. Pursuant to a pretrial agreement, the convening

authority (CA) suspended all confinement in excess of time served.

The appellant now alleges that the military judge abused his discretion in accepting his guilty pleas because voluntary intoxication was raised within the record and the military judge failed to properly advise the appellant of the elements of voluntary intoxication and develop a factual record.¹

We find the appellant's sole assignment of error to be without merit. After carefully considering the record of trial and the pleadings of the parties, we are satisfied that the findings and sentence are correct in law and fact and that no error materially prejudicial to the appellant's substantial rights exists. Arts. 59(a) and 66(c), UCMJ.

Discussion

A military judge's decision to accept a guilty plea is reviewed for an abuse of discretion. *United States v. Inabinette*, 66 M.J. 320, 322 (C.A.A.F. 2008). The guilty plea will not be set aside unless there is a substantial basis in law and fact for questioning the plea. *Id.* If the accused articulates matters inconsistent with the plea at any time during the proceeding, the military judge has the plenary responsibility to either resolve the apparent inconsistency or reject the plea. *United States v. Riddle*, 67 M.J. 335, 338 (C.A.A.F. 2009). See Art. 45(a), UCMJ. A failure to do so constitutes a substantial basis in law and fact for questioning the guilty plea. See *United States v. Phillippe*, 63 M.J. 307 (C.A.A.F. 2006). However, a "mere possibility" of such a conflict is not a sufficient reason to overturn the plea. *United States v. Shaw*, 64 M.J. 460, 462 (C.A.A.F. 2007) (quoting *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991)).

The elements of wrongful use of controlled substance under Article 112a, UCMJ, are: (a) that the accused used a controlled substance; and, (b) that the use by the accused was wrongful. MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.), Part IV, ¶ 37(b) (2). "Wrongfulness" is explained as meaning "without legal justification or authorization," and, as relevant to this case, "without knowledge of the contraband nature of the substance." *Id.* at ¶ 37(c) (5).

During his sentencing case, the appellant's unsworn statement referenced an ongoing issue with alcohol. Record at 43. The appellant stated that he was denied alcohol treatment after attempting to enroll through his command, and avers that had he received that treatment, it could have prevented his marijuana use. *Id.* The appellant also called the director of the Counseling Abuse Substances Center as a sentencing witness to

¹ The assignment of error was submitted pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

validate his diagnosis of alcohol dependence. The military judge then reopened providence inquiry into the matter.

The issue before us is whether the military judge's inquiry was sufficient to resolve any apparent ambiguity or inconsistency. The appellant argues that the inconsistency raised concerns the second element of Article 112a, UCMJ -- whether his use was wrongful -- suggesting that he did not knowingly use marijuana on the dates charged.² To the extent that any inconsistency was raised, it was clearly resolved by the military judge's supplemental inquiry. With respect to each specification charged, the appellant affirmed that he remembered the events with clarity, even though he was drunk when he used the marijuana. Record at 51-53. The military judge specifically asked the appellant whether he knew he was using marijuana and whether he could appreciate the wrongful nature of his conduct. The appellant answered yes to each question. We find the military judge's inquiry sufficiently resolves any apparent ambiguity or inconsistency raised by the appellant's statement, and he was not required to engage in a more in-depth inquiry into the appellant's intoxication. We further note that the prospective benefits that might have been garnered by the appellant had he received requested substance abuse treatment is speculative at best and enjoys no nexus with his clearly established criminal activity. We find that under the specific facts of this case, the trial judge's initial and supplemental inquiries resolved all outstanding issues, rendering the appellant's guilty pleas provident.

Conclusion

The findings and the sentence, as approved by the convening authority, are affirmed.

For the Court

R.H. TROIDL
Clerk of Court

² Voluntary intoxication is not a defense, but may be introduced for the purpose of raising a reasonable doubt as to the existence of actual knowledge...if actual knowledge...is an element of the offense. RULE FOR COURTS-MARTIAL 916(1)(2), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.).