

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

**Before
J.A. MAKSYM, J.R. PERLAK, T.R. ZIMMERMANN
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**MOSEPELO T. MOKGOATSANE
CORPORAL (E-4), U.S. MARINE CORPS**

**NMCCA 201000602
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 31 August 2010.

Military Judge: LtCol Eugene H. Robinson, USMC.

Convening Authority: Commanding Officer, Headquarters and Service Battalion, Marine Corps Base, Quantico, VA.

Staff Judge Advocate's Recommendation: LtCol C.H. Greer, USMC.

For Appellant: CAPT Salvador A. Dominguez, JAGC, USN.

For Appellee: Mr. Brian K. Keller, Esq.

17 May 2011

OPINION OF THE COURT

**IN ACCORDANCE WITH RULE 18.2, NMCCA RULES OF PRACTICE 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 one specification each of unauthorized absence and failing to obey a lawful general order by wearing an earring, and two specifications of using marijuana, in violation of Articles 86, 92, and 112a, Uniform Code of Military Justice, 10 U.S.C. §§ 886, 892, and 912a. The convening authority (CA) approved the sentence of confinement for 150 days, reduction to pay grade E-1, and a bad-conduct discharge from the U.S. Marine Corps.

This case is before us without assignment of error, but facially presents a dispositive issue related to the appellant's mental status. The evidence below amply indicates that the appellant was suffering the effects of post-traumatic stress disorder (PTSD) stemming from his experiences in combat. Both his spouse and mother testified to drastic changes in the appellant's personality following his combat tour. Record at 61, 64. The appellant, in his unsworn statement, likewise recounted behavioral changes and mortal events. Record at 67-68. The issue of mental capacity was clearly raised before the court.

Prior to closing the court for deliberations on sentence, the military judge asked the appellant whether he had been evaluated for PTSD. *Id.* at 70. The court was informed that such an evaluation was ongoing and that no diagnosis had been rendered as of the date of trial. *Id.* The colloquy which follows, containing several yes and no responses to questions from the military judge, amount to the appellant attesting to his own capacity, followed by conclusory statements of counsel for the appellant and the Government that there was no RULE FOR COURTS-MARTIAL 706, MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.) issue. *Id.* at 72.

The military judge returned from deliberations, awarding the sentence *supra*, followed by a "formal recommendation" on the record to the CA that an examination pursuant to R.C.M. 706 be conducted while the appellant served the adjudged confinement. *Id.* at 73. Despite the military judge's inquiry into the providence of the appellant's pleas, this recommendation betrays that the military judge harbored real doubt as to whether the appellant "lacked mental responsibility for any offense charged or lack[ed] capacity to stand trial." R.C.M. 706. Per the rule, it was the military judge's responsibility, at this point in the proceedings, to address the matter, not the CA's. It was improper for the military judge to accept the appellant's guilty pleas in light of this doubt. The military judge should have ordered the inquiry under R.C.M. 706 prior to accepting the appellant's pleas and imposing a sentence.

We review the military judge's ruling for an abuse of discretion. *United States v. Edwards*, 69 M.J. 375, 376 (C.A.A.F. 2011). A decision to accept a guilty plea will be set aside if there is a substantial basis in law or fact for questioning the plea. *United States v. Inabinette*, 66 M.J. 320, 322 (C.A.A.F. 2008). The evidence presented in this case establishes to our satisfaction that the possibility that the appellant suffered from PTSD raised "a possible defense." *United States v. Phillippe*, 63 M.J. 307, 310 (C.A.A.F. 2006). It was simply not possible, therefore, for the military judge to conduct the necessary inquiry into the appellant's pleas without exploring the impact of these mental health issues on those pleas. *United States v. Harris*, 61 M.J. 391, 398 (C.A.A.F. 2005); see also *United States v. Care*, 40 C.M.R. 247, 253 (C.M.A. 1969) (requiring the military judge to establish, on the record, the factual bases

that establish that "the acts or omissions of the accused constitute the offense or offenses to which he is pleading guilty").

On the record before us, the military judge's own words and actions following the announcement of sentence serve to impeach the guilty findings and provide a substantial basis in law and fact for questioning his acceptance of these pleas. *Inabinatte* at 322.

The findings and the sentence are set aside. The record is returned to the Judge Advocate General for remand to an appropriate CA with a rehearing authorized. After the CA takes action, the record will be returned to the court for completion of appellate review.

For the Court

R.H. TROIDL
Clerk of Court