

**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.

**CARLEE T. RICHARDSON III
PRIVATE (E-1), U.S. MARINE CORPS**

**NMCCA 201100018
GENERAL COURT-MARTIAL**

Sentence Adjudged: 29 September 2010.
Military Judge: LtCol David Jones, USMC.
Convening Authority: Commanding General, 3d Marine
Division, Camp Foster, Okinawa, Japan.
Staff Judge Advocate's Recommendation: LtCol K.J. Estes,
USMC.
For Appellant: Capt Bow Bottomly, USMC.
For Appellee: Mr. Brian Keller, Esq.

28 July 2011

OPINION OF THE COURT

**THIS OPINION DOES NOT SERVE AS BINDING PRECEDENT, BUT MAY BE CITED AS
PERSUASIVE AUTHORITY UNDER NMCCA RULE OF PRACTICE AND PROCEDURE 18.2.**

PER CURIAM:

A military judge sitting as a general court-martial convicted the appellant, pursuant to his pleas, of one specification of conspiracy to distribute "spice," five specifications of violating a lawful general order (all involving the use or distribution of a substance), one specification of making a false official statement, and one specification of misprision of a serious offense (arson), violations of Articles 81, 92, 107, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 881, 892, 907, and 934. The military judge convicted the appellant, contrary to his pleas, of one specification of arson and one specification of damage to military property of the

United States, violations of Articles 108 and 126, Uniform Code of Military Justice, 10 U.S.C. §§ 908 and 926. The military judge sentenced the appellant to 48 months confinement, total forfeiture of pay and allowances, a fine in the amount of \$20,000.00, and a dishonorable discharge. The convening authority approved the sentence as adjudged. There was no pretrial agreement.

This case is before us without any specific assignment of error. We find error and take corrective action below. Following our corrective action no errors materially prejudicial to the substantial rights of the appellant remain.

Background

The appellant lived in the barracks aboard Camp Schwab in Okinawa, Japan. On the evening of 29 March 2010, he and four other Marines were in the barracks consuming alcohol, smoking "spice," and ingesting Ambien pills prescribed to another Marine. Late that night or in the early morning hours of 30 March 2010, a couch in the barracks lounge was set afire. The next day, agents of the Naval Criminal Investigative Service ("NCIS") concluded an arson investigation. This included an interrogation of the appellant and other Marines who had been in the barracks when the fire was set.

Guilty Findings as to Both Misprision and Arson

During the guilty plea inquiry on the misprision offense, the appellant admitted knowing of the arson and knowing that Private First Class (PFC) W had committed the arson, but, upon interrogation, provided NCIS agents a general denial of knowledge of the crime. The appellant apparently also gave a more specific denial relating to PFC W's role or lack thereof, but this nuance is very poorly developed in the record. The military judge ultimately accepted the appellant's plea to the misprision offense and entered a guilty finding to Charge VII and its specification. Record at 450.

Following the providence inquiry, the Government went forward on two remaining charges, including the same arson offense which the appellant had pleaded guilty to concealing as part of his plea to misprision of a serious offense. The same PFC W testified that the appellant used a lighter to set the couch in the barracks on fire and was, in fact, a principal to the arson. The military judge so found, finding the appellant guilty of Charge III, Specification 1. *Id.*

The state of the findings, as entered by the military judge, cannot stand in their present guise. While the appellant was at liberty to enter a guilty plea to misprision and the military judge was initially at liberty to accept it, the final state of the evidence established that the appellant was a principal to the arson. The appellant could not, as a matter of law, be

simultaneously guilty of misprision of the same arson to which he was a principal.

We may not affirm a military judge's acceptance of a guilty plea if we find 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). This is such a case. We find a substantial basis in law, based on the facts received at court-martial, which compelled the military judge to reject the appellant's misprision guilty plea, or otherwise comport his findings to the final state of the evidence. His failure to do so constituted legal error and it was not a matter within his discretion to enter legally irreconcilable findings. We take corrective action below.

Conclusion

The findings of guilty to Charge VII and its specification are set aside. The findings of guilty for the remaining charges and specifications are affirmed. We find that removal of the misprision offense, in the context of the military judge having later found the appellant guilty of the principal offense, does not constitute a dramatic change in the penalty landscape which would prevent us from reassessing the sentence. Doing so, we are satisfied that the military judge would have adjudged a sentence at least as severe as that which he did adjudge. *See generally United States v. Buber*, 62 M.J. 476, 479 (C.A.A.F. 2006). The approved sentence is affirmed.

For the Court

R.H. TROIDL
Clerk of Court