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

Before
B.L. PAYTON-O'BRIEN, R.Q. WARD, J.R. MCFARLANE
Appellate Military Judges

UNITED STATES OF AMERICA

v.

MICHAEL A. SALMERON
PRIVATE FIRST CLASS (E-2), U.S. MARINE CORPS

NMCCA 201200409
SPECIAL COURT-MARTIAL

Sentence Adjudged: 19 July 2012.
Military Judge: Col Paul Starita, USMCR.
Convening Authority: Commanding Officer, 1st Battalion, 11th Marines, 1st Marine Division, Camp Pendleton, CA.
Staff Judge Advocate's Recommendation: Maj V.G. Laratta, USMC.
For Appellant: CAPT Ross Leuning, JAGC, USN.
For Appellee: CDR James E. Carsten, JAGC, USN; LT P.S. Reutlinger, JAGC, USN.

19 February 2013

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 special court-martial convicted the appellant, pursuant to his pleas, of unauthorized absence and assault in violation of Articles 86 and 128, Uniform Code of Military Justice, 10 U.S.C. §§ 886 and 928. The military judge sentenced the appellant to confinement for 10 months, reduction to pay grade E-1, and a bad-conduct discharge. The convening authority approved the sentence as adjudged and,

except for the bad-conduct discharge, ordered it executed. In accordance with the pretrial agreement, the convening authority suspended confinement in excess of four months.

In his sole assignment of error, the appellant argues that he was suffering from paranoid schizophrenia both at the time of the offenses and during trial. Despite the findings of a sanity board[1] and the military judge's related inquiry at trial,[2] the appellant still urges us to "reopen his hearing and inquire about his mental responsibility . . . . and his competency to assist counsel at trial."[3] We decline to do so as we find that no error materially prejudicial to a substantial right of the appellant occurred. Arts. 59(a) and 66(c), UCMJ.

We review a military judge's acceptance of a guilty plea for an abuse of discretion. *United States v. Inabinette*, 66 M.J. 320, 322 (C.A.A.F. 2008). We will not disturb a guilty plea unless the record of trial shows a substantial basis in law or fact for questioning that plea. *Id*. If there is a "substantial conflict" between the plea and the appellant's statements or other evidence of record, then it may be necessary to reject a plea, but "[a] 'mere possibility' of such a conflict is not a sufficient basis to overturn the trial results." *United States v. Garcia*, 44 M.J. 496, 498 (C.A.A.F. 1996) (citation omitted).

In this case, we find no cause to question the appellant's plea. The appellant was subject to a mental competency exam almost a month before trial with unremarkable results. The military judge reviewed the board's findings with the appellant on the record, and both the appellant and his defense counsel concurred with those findings. The military judge also explained the defense of lack of mental responsibility to the appellant before conducting his providence inquiry, and the appellant indicated that he discussed the possibility of the defense with his counsel, and he believed that the defense did not apply.

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[1] The appellant underwent a sanity board convened pursuant to RULE FOR COURTS-MARTIAL 706, MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.). The board found him to be mentally responsible at the time of the offenses and competent to stand trial. Appellate Exhibit IV.

[2] Record at 14-16.

[3] Appellant's Brief of 19 Dec 2012 at 4. The appellant raises this assignment of error under *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

The appellant now asserts that he has since been diagnosed with paranoid schizophrenia; however, he offers no evidence to support his assertion. At best, his unsubstantiated post-trial assertion raises a "mere possibility" of matter inconsistent with his earlier plea. *See United States v. Shaw*, 64 M.J. 460, 463 (C.A.A.F. 2007) (accused's passing reference to his diagnosis of bipolar disorder during his unsworn statement, without any substantiation, only raised a "mere possibility" of a conflict with his guilty plea). Accordingly, we find no substantial basis in law or fact for questioning his plea.

The findings and sentence are affirmed.

For the Court

R.H. TROIDL
Clerk of Court