

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

**Before  
E.E. GEISER, R.G. KELLY, J.L. FALVEY  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**REGINALD E. PARKER  
SERGEANT (E-5), U.S. MARINE CORPS**

**NMCCA 200600226  
SPECIAL COURT-MARTIAL**

**Sentence Adjudged:** 13 December 2002.

**Military Judge:** LtCol Edward Loughran, USMC.

**Convening Authority:** Commanding Officer, Chemical  
Biological Incident Response Force, 4th Marine  
Expeditionary Brigade (AT), Naval Surface Warfare Center,  
Indian Head, MD

**Staff Judge Advocate's Recommendation:** Col R.M. Sokoloski,  
USMC.

**For Appellant:** CAPT Edward Mallow, JAGC, USN.

**For Appellee:** Maj Tai D. Le, USMC.

**6 November 2007**

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**OPINION OF THE COURT**  
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**AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.**

FALVEY, Judge:

A military judge sitting as a special court-martial convicted the appellant, pursuant to his pleas, of three specifications of larceny, in violation of Article 121, Uniform Code of Military Justice, 10 U.S.C. § 921. The appellant was sentenced to confinement for 120 days, forfeiture of \$500.00 pay per month for a period of 4 months, a fine of \$1,100.00, reduction to pay grade E-1, and a bad-conduct discharge. On 30 November 2005, the convening authority (CA) approved the sentence as adjudged.

On 5 October 2006, this court set aside the original CA's action and remanded the record of trial for new post-trial processing. On 20 June 2007, the CA approved the sentence as adjudged but expressly disapproved the bad-conduct discharge. The record was re-docketed with this court on 23 July 2007. On 10 August 2007, the appellant advised this court that he had no additional assignments of error to submit.

The appellant initially raised six assignments of error.<sup>1</sup> In view of our 5 October 2006 remand, the appellant's last three assignments of error are moot. We will address the remaining two assignments of error alleging post-trial delay and the third assignment of error alleging that his pleas were improvident.

We have carefully considered the record of trial, the six assignments of error, and the Government's response. We concluded that the military judge erred in accepting a guilty plea to larceny because he failed to ascertain whether the appellant had the requisite specific intent. We approve a finding of guilty to the lesser included offense of wrongful appropriation pursuant to Article 59(b), UCMJ. As modified, we conclude that the findings are correct in law and fact, and no other error materially prejudicial to the substantial rights of the appellant was committed. Arts. 59(a) and 66(c), UCMJ. Finally, we have reassessed and affirm the sentence as approved by the convening authority.

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<sup>1</sup> The appellant raised the following assignments of error (AOE):

I. THE APPELLANT'S SUBSTANTIAL RIGHT TO SPEEDY POST-TRIAL REVIEW WAS MATERIALLY PREJUDICED BY THE UNREASONABLE DELAY IN POST-TRIAL PROCESSING.

II. THE 1428-DAY DELAY IN THIS CASE VIOLATES APPELLANT'S ARTICLE 66(c) RIGHT TO SPEEDY POST-TRIAL REVIEW.

III. THE MILITARY JUDGE ERRED IN ACCEPTING THE APPELLANT'S PLEAS OF GUILTY TO CHARGE II, SPECIFICATIONS 1, 2, AND 3 ALLEGING LARCENY OF U.S. CURRENCY.

IV. THE STAFF JUDGE ADVOCATE FAILED TO SERVE THE SJAR ON THE DETAILED DEFENSE COUNSEL.

V. APPELLANT WAS DENIED COUNSEL DURING A CRITICAL STAGE OF THE POST-TRIAL PROCESSING OF HIS CASE.

VI. THE CONVENING AUTHORITY INCORRECTLY APPROVED THE SENTENCE OF CONFINEMENT AS ADJUDGED INSTEAD OF SUSPENDING ALL CONFINEMENT IN ACCORDANCE WITH THE PRETRIAL AGREEMENT.

### Post-Trial Delay

In his first and second assignments of error, the appellant asserts that a delay of 1653 days from the date the sentence was announced to the date the record of trial was finally docketed with this court is unreasonable and violated his right to speedy post-trial review.<sup>2</sup> The post-trial delay in the appellant's case, while long, does not rise to the level of a due process violation. *United States v. Jones*, 61 M.J. 80, 83 (C.A.A.F. 2005)(citing *Toohey v. United States*, 60 M.J. 100, 102 (C.A.A.F. 2004)). Although the extensive delay between sentencing and the final docketing of this case is unreasonable, the appellant's 120 days of confinement would certainly have been completed even with the most energetic and proactive post-trial processing. The appellant does not assert and we do not find any specific prejudice to the appellant arising from this delay. See *United States v. Moreno*, 63 M.J. 129 (C.A.A.F. 2006). We further find that the length of the delay in this case does not affect the findings and sentence that should be approved under Article 66(c), UCMJ. *United States v. Brown*, 62 M.J. 602 (N.M.Ct.Crim. App. 2005)(en banc)(citing *United States v. Tardif*, 57 M.J. 219, 224 (C.A.A.F. 2002)). In this regard, we note with approval that the CA addressed this issue when, on the recommendation of his staff judge advocate, he expressly disapproved the bad-conduct discharge due to unreasonable post-trial delay. Staff Judge Advocate's Recommendation of 10 May 2007 at 3-4. No further relief is warranted.

### Improvudent Pleas

In his third assignment of error, the appellant alleges that the military judge erred in accepting his guilty plea to larceny. As noted above, the appellant pled guilty to three specifications of stealing currency of the United States, in violation of Article 121, UCMJ.

The factual basis for these three specifications stemmed from the appellant's manipulation of the unit diary system to provide himself unmerited allowances (Family Separation Allowance (FSA) and Basic Housing Allowance (BHA)) on three separate occasions totaling \$5,268.00 in currency of the United States. At the time, the appellant was his command's unit diary chief.

Analysis of the providence of a guilty plea requires that the facts revealed by the accused objectively support the plea of guilty. *United States v. Bullman*, 56 M.J. 377, 381 (C.A.A.F. 2002). Before accepting a guilty plea, the military judge is required to inform the accused of the nature of the offenses to

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<sup>2</sup> The appellant incorrectly asserts that 1,568 days elapsed between the date sentence was announced to the date the record of trial was first docketed with this Court. The correct calculation of this delay is 1200 days. An additional 453 days elapsed between original docketing and subsequent docketing resulting from our remand of the record of trial for a new CA's action after proper post-trial review.

which the guilty plea is offered. RULE FOR COURTS-MARTIAL 910(c), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2002 ed.). The military judge must also make "such inquiry of the accused as shall satisfy the judge that there is a factual basis for the plea." R.C.M. 910(e); see also *United States v. Outhier*, 45 M.J. 326, 331 (C.A.A.F. 1996); *United States v. Care*, 40 C.M.R. 247 (C.M.A. 1969); *United States v. Simmons*, 54 M.J. 883, 889 (N.M.Ct.Crim.App. 2001). A guilty plea should only be overturned on appeal if the record fails to objectively support the plea or there is "evidence in 'substantial conflict' with the pleas of guilty." *Bullman*, 56 M.J. at 381 (citing *United States v. Higgins*, 40 M.J. 67, 68 (C.M.A. 1994)). As such, the plea should not be found improvident unless, examining the totality of the record of trial, there exists a "'substantial basis' in law and fact for questioning the guilty plea." *Id.* at 383-84 (citing *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991)).

Review of the "totality of the circumstances" contained in the record of trial reveals an inadequate factual basis to objectively support the appellant's plea of guilty to stealing currency of the United States. The military judge explained to the appellant the elements of larceny tailored to the specification and correctly informed him of the pertinent definitions, including an explanation of the requisite specific intent. Subsequently, the appellant acknowledged understanding these elements and definitions, and he admitted that these elements correctly described his conduct. Record at 12-14. In discussing the details of the larceny specifications with the appellant, the military judge ascertained that the appellant used his administrative training, skills, and knowledge to manipulate the unit diary system and obtain the currency. He further ascertained that the money was for the appellant.

We note that the appellant repeatedly acknowledged that he was "stealing from the United States government," that he was "essentially stealing" the funds, that he had "a criminal state of mind," and that he was "guilty as charged of stealing the money." *Id.* at 15-22. However, the appellant never affirmatively admitted that he had the specific intent to permanently deprive the United States of the use and benefit of the currency he stole.

Examining the totality of the record of trial, we find a "'substantial basis' in law and fact for questioning the guilty plea." *Bullman*, 56 M.J. at 383 (citing *Prater*, 32 M.J. at 436). The military judge should have explicitly ascertained the appellant's intent and failed to do so. For this reason, we find the appellant's plea of guilty to larceny to be improvident. However, even though the totality of the evidence fail to establish the requisite specific intent for larceny, the appellant's providence inquiry supports a conviction for the lesser included offense of wrongful appropriation. As noted above, the appellant repeatedly admitted to "stealing" with a "criminal state of mind." Although this may not objectively

evidence the specific intent to permanently deprive the United States of the stolen currency, it certainly includes the intent to temporarily deprive the Government. The appellant clearly intended to take money that did not belong to him and, at a minimum, he intended to temporarily deprive the United States of its use and benefit.

### **Conclusion**

In view of the above, we find the appellant's guilty plea to three specifications of larceny to be improvident and we set aside the findings of guilty to these specifications. However, we affirm findings of guilty to three specifications of wrongful appropriation and a finding of guilty to a charge of wrongful appropriation in violation of Article 121, UCMJ.

Applying the principles of *United States v. Peoples*, 29 M.J. 426 (C.M.A. 1990) and *United States v. Sales*, 22 M.J. 305 (C.M.A. 1986), we reassess and affirm the sentence as adjudged and approved below.

Senior Judge GEISER and Judge KELLY concur.

For the Court

R.H. TROIDL  
Clerk of Court