

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

**Before
J.K. CARBERRY, B.L. PAYTON-O'BRIEN, M.D. MODZELEWSKI
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**OSBORN N. MIRANDA
HOSPITALMAN (E-3), U.S. NAVY**

**NMCCA 201100084
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 9 November 2010.

Military Judge: LtCol Eugene H. Robinson, USMC.

Convening Authority: Commanding Officer, Instructor
Battalion, The Basic School, Training Command, Quantico,
VA.

Staff Judge Advocate's Recommendation: LtCol J.L. Gruter,
USMC.

For Appellant: Maj Rolando R. Sanchez, USMCR.

For Appellee: CAPT James B. Melton, JAGC, USN; Maj William
C. Kirby, USMC.

6 September 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 special court-martial, convicted the appellant, pursuant to his pleas, of three specifications of insubordinate conduct towards a non-commissioned officer, in violation of Article 91, Uniform Code of Military Justice, 10 U.S.C. § 891. The appellant was

sentenced by officer and enlisted members to confinement for 120 days, reduction to pay grade E-1, and a bad-conduct discharge. The convening authority approved the sentence as adjudged.

The appellant has submitted one assignment of error: that his pleas were improvident, because the military judge abused his discretion by failing to inquire into his bipolar and post-traumatic stress disorders and their effect on his ability to appreciate the nature and quality or the wrongfulness of his acts.¹ We have examined the record of trial, the appellant's assignment of error, and the pleadings of the parties. We conclude that the findings and the sentence are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant was committed. Arts. 59(a) and 66(c), UCMJ.

Background

The appellant pleaded guilty to using disrespectful language towards a superior noncommissioned officer and striking two superior noncommissioned officers while they were in the execution of their offices. All of the charges against the appellant arose from an incident that occurred in the workplace between the appellant, his supervisor, and another co-worker. Prior to trial, the court ordered an evaluation under RULE FOR COURTS-MARTIAL 706, MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.) to inquire into the appellant's mental competency and mental responsibility.² The R.C.M. 706 board reported the following answers to the questions posed by the military judge:

1. At the time of the alleged criminal conduct, did [the appellant] have a severe mental disease or defect? No
2. What is the clinical psychiatric diagnosis? NA
3. Was [the appellant], at the time of the alleged criminal conduct and as a result of such severe disease or defect, unable to appreciate the nature and quality or wrongfulness of his conduct? No

¹ Appellant's Brief of 15 Apr 2011 at 1.

² Three military judges were involved in this case: one military judge ordered the R.C.M. 706 board; a second military judge arraigned the appellant; and a third military judge conducted the trial. It was the first military judge that ordered the R.C.M. 706 evaluation in this case.

4. Is [the appellant] presently suffering from a mental disease or defect rendering him unable to understand the nature of the proceedings against him or to conduct or cooperate intelligently in his defense? No

[Emphasis added].³

During sentencing, the appellant introduced medical evidence establishing that he had visited various mental health care providers since his return from Afghanistan. Defense Exhibit A. The medical records demonstrate that the appellant had been prescribed medication for post-traumatic stress disorder (PTSD), insomnia, anger, and irritability. *Id.* Additionally, during his unsworn statement, the appellant informed the judge he had been diagnosed with PTSD and adjustment disorder and was getting treated for bipolar disorder. Record at 148. No expert or other witness testified that the appellant's mental disorders resulted in a lack of mental responsibility for his misconduct. Neither the medical evidence nor the appellant's unsworn statement asserted clinical psychosis or a lack of mental responsibility.

During the providence inquiry, the appellant admitted his conduct was a freely-made decision for which he had no legal justification or excuse. Record at 32, 40. Although the trial judge did not inquire into the appellant's history of mental illness or its relation to the appellant's offenses during the trial proceedings, he was aware of the existence of the R.C.M. 706 evaluation. The R.C.M 706 "short-form" board report had been discussed between the parties and the trial judge at a pretrial conference with the trial judge. Record at 13.

Providence of the Plea

We review a military judge's decision to accept or reject an accused's guilty plea for an abuse of discretion. *United States v. Eberle*, 44 M.J. 374, 375 (C.A.A.F. 1996). A decision to accept a guilty plea will be set aside only where the record of trial shows 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). "If an accused 'sets up matter inconsistent with the plea' at any time during the proceeding, the military judge must either resolve the apparent inconsistency or reject

³ Appellate Exhibit XIII.

the plea." *United States v. Garcia*, 44 M.J. 496, 498 (C.A.A.F. 1996)(quoting Article 45(a), UCMJ); see RULE FOR COURTS-MARTIAL 910(h)(2), MANUAL FOR COURT-MARTIAL, UNITED STATES (2008 ed.). The existence of an apparent and complete defense is necessarily inconsistent with a guilty plea. *United States v. Shaw*, 64 M.J. 460, 462 (C.A.A.F. 2007). The "mere possibility" of a conflict between the plea and the appellant's statements or other evidence of record is not a sufficient basis to overturn the trial results. *Id.* (quoting *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991)).

The appellant asserts his pleas were improvident due to evidence in the record indicating he could have lacked mental responsibility for his conduct. Prior to trial, however, the court-ordered R.C.M. 706 board concluded that the appellant did not suffer from a severe mental disease or defect at the time of the offenses; that he did appreciate the nature and quality or wrongfulness of his conduct; and that he could understand and participate in the proceedings against him. The appellant did not challenge those results.

A military judge may reasonably rely on presumptions that the accused is sane and that counsel is competent. *Id.* at 463 (citing *United States v. Cronin*, 466 U.S. 648, 658 (1984) and *United States v. Scott*, 24 M.J. 186, 188 (C.M.A. 1987)); see also R.C.M. 916(k)(3)(A)). The military judge was aware of the results of the R.C.M. 706 board, and was entitled to conclude that the appellant was mentally responsible and had discussed any mental responsibility defenses with his counsel. The absence of conflicting medical evidence in the appellant's trial places this case squarely within the holding of the Court of Appeals for the Armed Forces decision in *Shaw*, which held that a defendant's "passing reference" to bipolar disorder during trial was insufficient to question the providency of that defendant's guilty plea. The court in *Shaw* explained that while a mental disorder like bipolar disorder "may exist with enough severity to raise a substantial question regarding the issue of the accused's mental responsibility . . . [a] disorder does not negate responsibility in all cases." *Shaw*, 64 M.J. at 463. Under the circumstances of this case, the appellant's "passing reference" to his mental disorders established only a "mere possibility" of conflict with the plea and did not raise a substantial question regarding his mental responsibility. *Id.* at 462, 464.

We decline to extend our ruling in *United States v. Zaruba*, No. 201000382, 2011 CCA LEXIS 27, unpublished op. (N.M.Ct.Crim.App. 28 Feb 2011) to situations in which there has

been an R.C.M. 706 inquiry and competency finding prior to the trial proceedings. In *Zaruba*, despite production of substantial evidence of mental illness during trial, the military judge neither ordered an R.C.M. 706 board, nor inquired into a possible mental responsibility defense during the guilty plea inquiry. We found this to be error. Here, the appellant had a pretrial R.C.M. 706 finding of competency that was well-known to the appellant, his attorney, the Government, and the military judge. Further, there was no proffered evidence in this case demonstrating that the appellant's mental disorders had resulted in a lack of mental capacity.

Although the record demonstrates that the appellant suffered from mental disorders, the conclusion by a pretrial R.C.M 706 board that the appellant was mentally responsible establishes to our satisfaction that the appellant's evidence was insufficient to raise a substantial question regarding his mental responsibility. The military judge is not required "to embark on a mindless fishing expedition to ferret out or negate all possible defenses or potential inconsistencies." *United States v. Jackson*, 23 M.J. 650, 652 (N.M.C.M.R. 1986). Accordingly, we find that the military judge did not abuse his discretion by accepting the appellant's guilty pleas, as he was not required to inquire into a mental responsibility defense.

Conclusion

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

For the Court

R.H. TROIDL
Clerk of Court