

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

**Before
M.D. MODZELEWSKI, R.G. KELLY, R.Q. WARD
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**LUCAS D. WYLIE
INTERIOR COMMUNICATIONS ELECTRICIAN
FIREMAN (E-3), U.S. NAVY**

**NMCCA 201200123
GENERAL COURT-MARTIAL**

Sentence Adjudged: 18 November 2011.

Military Judge: CAPT Eric Price, JAGC, USN.

Convening Authority: Commander, Navy Region Midwest, Great Lakes, IL.

Staff Judge Advocate's Recommendation: LCDR M.H. Lee, JAGC, USN.

For Appellant: Capt Michael Berry, USMC.

For Appellee: Maj William Kirby, USMC.

6 November 2012

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 unauthorized absence, failure to obey an order or regulation, aggravated sexual assault, and obstruction of justice, in violation of Articles 86, 92, 120, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 886, 892, 920, and 934, respectively. The

appellant was sentenced to 9 years confinement, reduction to pay grade E-1, forfeiture of all pay and allowances, and a dishonorable discharge. The convening authority (CA) approved the sentence as adjudged, and except for the punitive discharge, ordered the sentence executed. In accordance with the pretrial agreement, the CA suspended confinement in excess of 102 months.

Assignment of Error

In a sole assignment of error, the appellant claims that the military judge failed to elicit an adequate factual predicate for the appellant's guilty plea to the obstruction of justice offense.

After carefully considering the record of trial and the pleadings of the parties, we conclude that the military judge did not abuse his discretion in accepting the appellant's guilty plea to the sole specification under Additional Charge II. The findings and the sentence are correct in law and fact and there was no error materially prejudicial to the substantial rights of the appellant. Arts. 59(a) and 66(c), UCMJ.

Background

In January 2011, the appellant, a recent graduate of recruit training at Naval Station Great Lakes, was attached to Training Support Command (TSC) as a student. On 14 January the appellant and several of his shipmates, to include Electronic Technician Seaman (ETSN) TL, all agreed to go out together during authorized liberty. Because TSC had a required liberty buddy policy, and since the appellant and ETSN TL were friends, they agreed to be liberty buddies. After dinner, the appellant and ETSN TL took a taxi to a bar where they began drinking.

Four other Sailors eventually joined the two liberty buddies, and they all decided in the early morning of 15 January to go to a restaurant to get something to eat. Following their meal, all six of the Sailors decided they would all share one room at a local hotel rather than return to the base. Although it was apparent that ETSN TL was visibly intoxicated, one of the Sailors sexually assaulted ETSN TL while she was incapacitated in the hotel room. Then, one after the other, the other Sailors sexually assaulted ETSN TL.

The appellant's general court-martial on these sexual assault charges was to start at 1300 on 29 August 2011. However, the appellant changed his mind on the day of trial and

hid in a vacant building on base until he was discovered on 1 September 2011 and apprehended.

In the sole specification of Additional Charge II, the Government alleged that from on or about 29 August 2011 through on or about 1 September 2011, the appellant did wrongfully endeavor to impede his trial by court-martial, by "wrongfully concealing his location during the time of the scheduled trial of his court-martial case, which conduct was to the prejudice of good order and discipline in the armed forces." The appellant entered a plea of guilty to Additional Charge II and the sole specification thereunder.¹

The military judge accepted the plea after an inquiry pursuant to *United States v. Care*, 40 C.M.R. 247 (C.M.A. 1969). Additionally, the appellant entered into a Stipulation of Fact, in which he admits in paragraphs 46-51 that he knew he was to be in the courtroom, decided not to attend, chose to conceal himself aboard the base, entered a vacant building, and remained there until discovered. The appellant knew law enforcement and others would be looking for him, but he wanted to avoid his prosecution. The appellant agreed that his concealment was wrongful, that he had no legal justification or excuse, and that he intended to obstruct the due administration of justice by impeding his court-martial process from going forward.² Although he requested clemency, no specific legal error was raised by trial defense counsel in response to the recommendation of the staff judge advocate.

The Providence of the Appellant's Guilty Plea

The appellant argues on appeal that his plea to the sole specification under Additional Charge II is "improvident because the military judge failed to establish an adequate factual basis to support the plea."³ We review a military judge's decision to accept a guilty plea for an abuse of discretion. *United States v. Eberle*, 44 M.J. 374, 375 (C.A.A.F. 1996). A military judge is afforded "significant deference" in accepting a guilty plea, and there must be a "substantial basis" in law or fact for us to question his decision. *United States v. Inabinette*, 66 M.J. 320, 322 (C.A.A.F. 2008).

¹ Record at 200.

² Prosecution Exhibit 3 at 7.

³ Appellant's Brief of 13 Jun 2012 at 5.

The question this court faces is whether the appellant's responses during the providence inquiry are legally and factually sufficient to satisfy the service discrediting element. The military judge did not decide to accept appellant's plea of guilty in a vacuum, nor was he limited only by the verbal exchange during the colloquy on the one element. The military judge described in detail to the appellant the elements of the questioned offense. The military judge then continued by defining for the appellant the definition of what constitutes prejudice to good order and discipline in the armed forces and conduct that is service discrediting.⁴ The appellant indicated to the military judge that he understood the definitions, and then his trial defense counsel specifically requested that the military judge repeat the definition of conduct that was to the prejudice of good order and discipline in the armed forces.⁵

Here, the military judge and the appellant had an extensive colloquy, covering in great detail the actions of the appellant including: avoiding his court-martial, concealing himself in a vacant building on base to avoid trial, impeding his trial, adversely influencing the administration of justice, and admitting directly to the military judge that under these circumstances his conduct was prejudicial to good order and discipline in the United States Navy.⁶

After considering all the facts and circumstances, we are left with no basis in law or fact to question the military judge's decision to accept this plea. The assigned error is without merit.

Conclusion

The findings and the sentence are therefore affirmed.

For the Court

R.H. TROIDL
Clerk of Court

⁴ Record at 288.

⁵ *Id.* at 289.

⁶ *Id.* at 292.