UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
PENLAND, MORRIS, and ARGUELLES[1]
Appellate Military Judges

UNITED STATES, Appellee
v.
Specialist ETHAN H. KIBLER
United States Army, Appellant

ARMY 20220245

Headquarters, Seventh Army Training Command
Thomas P. Hynes, Military Judge
Lieutenant Colonel Jeremy W. Steward, Staff Judge Advocate

For Appellant: Major Bryan A. Osterhage, JA; Captain Andrew W. Britt, JA (on brief).

For Appellee: Lieutenant Colonel Jacqueline J. DeGaine, JA (on brief).

31 October 2023

MEMORANDUM OPINION AND ORDER

This opinion is issued as an unpublished opinion and, as such, does not serve as precedent.

ARGUELLES, Judge:

A military judge sitting as a general court-martial convicted appellant, pursuant to his pleas, of two specifications of domestic violence, one specification of destruction of non-military property, one specification of violation of a lawful order, and one specification of absence without leave, in violation of Articles 128b, 109, 92, and 86, Uniform Code of Military Justice. 10 U.S.C. §§ 928b, 909, 892, and 886. [UCMJ].

The military judge sentenced appellant to a total of 290 days and a bad conduct discharge. The incarceration portion of the sentence included the following:

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[1] Judge ARGUELLES decided this case while on active duty.

(1) 290 days for the domestic violence by suffocation specification; (2) 182 days for the domestic violence by strangulation specification; (3) 30 days for the absent without leave specification; (4) 15 days for the violation of a lawful order specification; and (5) zero days for the destruction of non-military property specification, with all sentences to run concurrently. The convening authority took no action on the findings and sentence.

This case is before the court for review pursuant to Article 66, UCMJ. Appellant personally raised two matters pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), one of which (legal sufficiency of the domestic violence by suffocation specification) warrants both relief and further proceedings on remand as directed by our decretal Order.[2]

BACKGROUND

While stationed in Germany appellant married an Iranian national. Because she only possessed an Iranian passport, appellant encountered problems getting her into the Army DEERS system and onto post, which caused friction in the relationship and ultimately led to the charges in this case.

LAW AND DISCUSSION

A. Legal Sufficiency of Specification 2 of Charge V

Appellant asserts that his conviction for domestic violence by suffocation is not legally sufficient. As explained below, we agree and find that: (1) the military judge failed to resolve the significant inconsistencies between the specification as pled and the facts that appellant admitted; and, (2) alternatively, that the military judge erred in relying on facts outside those charged in the specification to find appellant provident.

1. Additional Facts

Included within the National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, 132 Stat. 1636 (13 Aug 2018) (2019 NDAA) was a new offense, Article 128b Domestic Violence, which provided as follows:

[2] We have also given full and fair consideration to the other matter personally raised by appellant pursuant to *Grostefon*, and find it to be without merit.

> Any person who—
>
> (1) commits a violent offense against a spouse, an intimate partner, or an immediate family member of that person;
>
> (2) with intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of that person—
>
> (A) commits an offense under this chapter [10 USCS §§ 801 et seq.] against any person; or
>
> (B) commits an offense under this chapter [10 USCS §§ 801 et seq.] against any property, including an animal;
>
> (3) with intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of that person, violates a protection order;
>
> (4) with intent to commit a violent offense against a spouse, an intimate partner, or an immediate family member of that person, violates a protection order; or
>
> (5) assaults a spouse, an intimate partner, or an immediate family member of that person by strangling or suffocating;
>
> shall be punished as a court-martial may direct.

2019 NDAA, § 532(a).

As originally charged, Charge V contained three specifications for Article 128b domestic violence. At issue is Specification 2, which, as described in greater detail below, the military judge construed as constituting a violation of Article 128b(5), domestic violence by suffocation. In January of 2022, the President issued Executive Order 14062, which defined the term "suffocation" as used in Article 128 and Article 128b as follows: "Intentionally, knowingly, or recklessly impeding the normal breathing of a person by covering the mouth of the person, the nose of the person, or both, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim." Exec. Order No. 14062, 87 Fed. Reg. 4763, 4772 (Jan. 31 2022).

Specification 1 (which is not at issue here) clearly charged that appellant assaulted his spouse by strangling her, with his hands around her neck, impeding her normal breathing. As originally charged, Specification 2 alleged that appellant did "assault . . . his spouse by placing a pillow over her face, and did thereby inflict substantial bodily harm upon her, to wit: impeding her normal breathing." Given that Specification 2 did not explicitly allege, or even contain the word, "suffocate," it was not clear from the outset if the government was alleging that appellant committed a violation of Article 128b(1) (violent offense against his spouse that resulted in her not being able to breathe normally), or a violation of Article 128b(5) (suffocation).

As part of his plea, appellant agreed to plead guilty to Specification 2 as amended, which alleged that he did "assault . . . his spouse by placing a pillow over her *chest and neck,* and did thereby inflict substantial bodily harm upon her, to wit: impeding her breathing." Given the parties' agreement to delete the word "face" in the amended specification, combined with the fact that the legal definition of "suffocation" requires a covering of the nose or mouth, it appears that the intent of the amendment was to clarify that the altered specification alleged domestic violence under a violent offense theory. In the section of the Stipulation of Fact specifically discussing Specification 2, appellant agreed that he did "assault [his spouse] by placing a pillow over her chest and neck and hitting her through it," and "that when the pillow was put over his Spouse's chest and neck and he hit her through it, he did bodily harm to her, and that he did so with unlawful force." Similarly, earlier in the Stipulation of Fact appellant again admitted that he hit his spouse through the pillow so as not leave any bruising (which would again appear to support a violent offense theory), but then added that his weight was on her chest and he "has no doubt that her breathing would be impaired."

The military judge never clarified on the record whether the government was proceeding under a theory of domestic violence by violent offense or by suffocation, but rather provided appellant with the elements of the suffocation offense during the Specification 2 colloquy.[3] When asked to explain why he was guilty of this specification, appellant first described how he held the pillow against his wife's body and hit her through the pillow, and then stated "[m]y action of holding the pillow on her chest while punching her through the pillow inflicted substantial bodily harm to her by making it difficult for her to breathe." After he again explained how he punched his wife through a pillow, in response to further questioning, appellant for the first time stated that the pillow "was above her face and chest."

[3] At one point early in the proceedings, the military judge referenced an off the record discussion held under Rule for Court Martial 802, noting that "[w]e also discussed some issues in the stipulation of fact related to how the Article 128(b) offenses were charged, which did not have model specifications for them at the time. We discussed in a couple of instances which facts in this stipulation were for charged offenses and which facts were facts in aggravation, which I will explore with [appellant]." Based on this record, we do not know if any of these discussions included a clarification of whether Specification 2 of Charge V alleged domestic violence under a violent offense or suffocation theory, nor do we know if there was any discussion as to how the amended specification precluded appellant's ability to plead guilty to Article 128b(5) domestic violence by suffocation.

The military judge did not follow up or attempt to resolve: (1) the discrepancy between the fact that he instructed on a theory of suffocation and appellant for the most part appeared to be admitting to "violent offense" conduct; and (2) the fact that appellant was now admitting to conduct which was beyond the scope of the amended specification, and indeed to which the parties had previously agreed to expunge from the specification as originally charged. To the contrary, the military judge instead asked appellant if his wife gave "any indication that she wanted you to put your *hand around her neck* or to put a pillow over her face and neck," to which appellant responded "Now [sic], your honor." (emphasis added). As there was nothing in the Stipulation about this specification involving appellant putting his hand on his wife's throat, it appears at this point that both the military judge and appellant were confusing Specification 2 and Specification 1, the latter of which did allege strangulation.

When subsequently asked how he knew he was suffocating his wife, appellant again stated that the pillow was "over her face and her chest." He added that "it was over her chest and neck, your Honor, and her face." Appellant then stated that he believed he was suffocating his wife because the pillow was "blocking central airway." Again, the military judge made no effort to clarify the discrepancy between the amended specification and appellant's statements. Nor did he ask appellant why he pleaded to an amended specification which specifically deleted the allegation that he held the pillow over his wife's face, yet then expressly admitted to such conduct during the providence inquiry.

2. Analysis

We review a military judge's acceptance of a guilty plea for an abuse of discretion, and questions of law arising from the guilty plea de novo. *United States v. Murphy*, 74 M.J. 302, 305 (C.A.A.F. 2015) (citing *United States v. Inabinette*, 66 M.J. 320, 322 (C.A.A.F. 2008)). The military judge is responsible for determining whether there is an adequate basis in law and fact to support a guilty plea. *Inabinette*, 66 M.J. at 322 (citation omitted). It is not sufficient to merely obtain the accused's consent to the elements as defined, rather, the military judge must question the accused "about what he did or did not do, and what he intended" in order to establish the providence of his plea. *United States v. Care*, 18 C.M.A. 535, 40 C.M.R. 247, 253 (1969). A military judge abuses his discretion where he fails to obtain an adequate factual basis to support the plea. *Inabinette*, 66 M.J. at 322.

In reviewing a military judge's acceptance of a plea, we apply a substantial basis test: "Does the record as a whole show 'a substantial basis' in law and fact for questioning the guilty plea." *Id.* (citations omitted). Put another way, once the military judge accepts the plea and enters a finding, "an appellate court will not reverse that finding and reject the plea unless it finds a substantial conflict between

the plea and the accused's statements or other evidence of record," to include the stipulation of fact. *United States v. Garcia*, 44 M.J. 496, 498 (C.A.A.F. 1996). In *Garcia,* the Court of Appeals for the Armed Forces (CAAF) explained that 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 the plea.*" *Id. (citing Article 45(a), UCMJ)* (emphasis added); s*ee also United States v. Morris*, 58 M.J. 739, 743 (Army Ct. Crim. App. 2003) (finding no error where "the three most critical requirements for a provident plea were satisfied[:]" Appellant admitted the facts necessary to establish the charges, he expressed a belief in his own guilt, and *there were no inconsistencies between the facts and pleas."*) (emphasis added).

Applied here, the military judge erred in failing to resolve the substantial conflict and inconsistencies between: (1) whether the Article 128b offense as amended in Specification 2 of Charge V alleged a violation of Article 128b(5) (suffocation) or Article 128b(1) (violent offense); (2) the fact that the amended allegation, asserting that appellant covered his wife's chest and neck with a pillow, failed to meet the legal definition of "suffocation" (which again requires a covering of the nose or mouth); and (3) the fact that the parties amended the specification to expressly delete any reference to the face, yet appellant contended that he suffocated his wife by placing the pillow over her face.[4] Given these contradictions, appellant was not provident to Specification 2 of Charge V, and it must be set aside for legal insufficiency. *See United States v. Kim*, 83 M.J. 235, 238 (C.A.A.F. 2023) ("[B]ecause a guilty plea is an admission of all the elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts.") (citations omitted).[5]

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[4] Although the Stipulation of Fact contained a brief reference to appellant's weight on his wife's chest causing breathing problems, the military judge did not pursue this line of inquiry. In any event, because it does not involve the covering of the victim's nose and mouth, this conduct would not have satisfied the legal definition of suffocation.

[5] Appellant does not request that this specification be set aside, but rather asks that we find him guilty of a violation of Article 128b(1), domestic violence by violent offense, by striking the language "and did thereby inflict substantial bodily harm upon her, to wit: impeding her normal breathing." We, however, lack the jurisdiction to grant the remedy appellant seeks. *See United States v. English*, 79 M.J. 116, 121 (C.A.A.F. 2019) ("But there is no authority, statutory or otherwise, that permits the ACCA to except language from a specification in such a way that creates a broader or different offense than the offense charged at trial.").

Finally, because the military judge imposed the longest term of confinement for this specification, and because appellant now stands improperly convicted of suffocating his spouse, the military judge's error materially prejudiced appellant's rights. *See United States v. Moratalla*, 82 M.J. 1, 4 (C.A.A.F. 2021) ("Even if a guilty plea is later determined to be improvident, a reviewing court may grant relief only if it finds that the military judge's error in accepting the plea "materially prejudice[d] the substantial rights of the accused." Article 45(c), UCMJ.").

Alternatively, we find that the military judge erred in relying on facts not contained in the specification as amended to find appellant provident and guilty of Specification 2. *See United States v. Rauscher*, 71 M.J. 225, 227 (C.A.A.F. 2012) (noting that accused has "substantial right to be tried only on charges presented in [a specification]" (alteration in original) (quoting *Stirone v. United States*, 361 U.S. 212, 217, 80 S. Ct. 270, 4 L. Ed. 2d 252 (1960))); *United States v. Geppert*, 7 C.M.A. 741, 743, 23 C.M.R. 205, 207 (1957) (noting that "the Government is free to prosecute under specifications couched in language of its choice").

In *United States v. Plant*, 74 M.J. 297, 299 (C.A.A.F. 2015), the government charged appellant with child endangerment through his use of alcohol and cocaine while he had a duty to care for his child. The panel found appellant guilty of this specification but excepted the word "cocaine." The CAAF later held that, given the charging language and the panel's verdict, when considering the legal sufficiency of the conviction it could not consider conduct not specifically alleged, to include the fact that appellant used cocaine, invited strangers into his home, and sexually assaulted two young women in the same residence where his son was sleeping. *Id.* The same logic applies here. In analyzing the legal sufficiency of the domestic violence by strangulation specification, we may not consider evidence that the appellant used a pillow to cover his wife's face when that conduct was not part of the specification. This is especially true in this case, where the parties took affirmative steps to exclude that very conduct by agreeing to omit in the amended specification any reference to appellant covering his wife's face with a pillow. Accordingly, we find in the alternative that the military judge also erred by basing his finding of guilt on conduct not alleged in the specification at issue.

As explained in greater detail below in our decretal Order, however, setting aside the defective specification leaves us at an impasse wherein we cannot take further action until a determination is made as to whether the Convening Authority wants to exercise his or her option to withdraw from the plea agreement.

B. The Military Judge's Failure to Rule on Motion to Dismiss

Paragraph 8(b) of the Plea Agreement called for the government to dismiss without prejudice the "charges, specifications, and excepted language" to which appellant pleaded not guilty.

Prior to the entry of pleas, the military judge granted the government's motion to amend the following charges and specifications: The Specification of Charge I, and Specifications 1, 2, and 3 of Charge V. All of the amended charges and specifications were set forth in Appellant Exhibit III. In accordance with the Plea Agreement, appellant then plead as follows:

To Charge I and its Specification as Charged:	Not Guilty;
To the Lesser Included Offense as detailed in Appellate Exhibit III:	Guilty;
To Charge I:	Guilty;
To Charge II and its Specification:	Guilty;
To Specification 1 of Charge V as written:	Not Guilty;
To Specification 1 of Charge V as amended on Appellate Exhibit III:	Guilty;
To Specification 2 of Charge V as written:	Not Guilty;
To Specification 2 of Charge V as amended in Appellate Exhibit III:	Guilty;
To Specification 3 of Charge V as written:	Not Guilty;
To the Lesser Included Offense of Specification 3 of Charge V as written on Appellate Exhibit III:	Guilty;
To Charge V:	Guilty

First, given that Charge I and its specification and Specifications 1, 2, and 3 of Charge V were all amended prior to the entry of plea, there was no reason for appellant to enter not guilty pleas to those specifications as originally drafted. Likewise, the military judge's entry of not guilty findings for the same nonexistent charges and specifications was unnecessary.

More importantly, appellant never entered a plea to either Charge III and its specification or Charge IV and its specification, and the military judge never entered findings for either of these two charges and specifications. At the outset, the military judge failed to enter not guilty pleas for these charges and specifications as required by Rule for Courts-Martial 910(b), which states, in pertinent part, that if an accused fails to enter a plea, "the military judge shall enter a plea of not guilty." *See also* Article 45(a), UCMJ (if an accused fails to enter plea, "a plea of not guilty shall be entered in the record, and the court shall proceed as though he pleaded not guilty").

Although the military judge made several references to the "dismissals" during the trial, government counsel never made any motion to dismiss, and the military judge never formally dismissed Charge III and its specification and Charge IV and its specification. Given that the government offered no evidence in support of these charges and their specifications, and no motion to dismiss was made or granted, the military judge erred in not announcing not guilty findings at the conclusion of the trial. *See* R.C.M. 922(a) ("Findings shall be announced in the presence of all parties after they have been determined"); Article 53, UCMJ. See R.C.M. 922(a) ("Findings shall be announced in the presence of all parties after they have been determined"); article 53(a), UCMJ ("A court martial shall announce its findings and sentence to the parties as soon as determined. We are cognizant that under R.C.M. 922(d) and 1104(a)(1) we have the authority to remand this case and direct the military judge to announce not guilty findings in a post-trial Article 39(a) hearing. In the interest of judicial economy, however, we will instead exercise our discretion to dismiss both Charge III and its specification, and Charge IV and its specification, with prejudice.[6]

C. Convening Authority Option to Withdraw from Plea Agreement

Paragraph 5(e) of the Plea Agreement provides that the Convening Authority may withdraw from the plea agreement "if findings are set aside because my plea of guilty pursuant to the agreement was held improvident on appellate review." In *United States v. Acevedo*, 50 M.J. 169, 172 (C.A.A.F. 1999), the CAAF held that basic principles of contract law apply when interpreting a plea agreement, and that where the terms of an agreement are "unambiguous, the intent of the parties is discerned from the four corners of the contract." Directly on point here, the Court of Military Appeals in *United States v. Cook* held:

> If, however, appellee can successfully attack the providence of his guilty pleas, escape the conviction based on those pleas, yet bar the convening authority from resurrecting the withdrawn charges, "the convening authority has, in a sense, not received the expected benefit of his bargain."

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[6] Contrary to what happened on the record, the Statement of Trial Results ("STR") states that "not guilty" pleas and findings were entered for Charge III and its specification and Charge IV and its specification. We will exercise our discretion to correct the STR to reflect our ruling. *See* Rule for Courts-Martial 1111(c)(2); *United States v. Pennington*, ARMY 20190605, 2021 CCA LEXIS 101, at *5 (Army Ct. Crim. App. 3 Mar. 2021) (summ. disp.) ("Exercising our authority under R.C.M. 1111(c)(2), we note and correct the following issues in appellant's post-trial documents . . . .").

12 M.J. 448, 455 (citing *United States v. Mills,* 12 M.J. 1, 3 (C.M.A. 1981)*; see also United States v. Stout*, No. ARMY 20120592, 2018 CCA LEXIS 174 at *8-9 (Army Ct. Crim. App. 9 Apr. 2018) (mem. op.), *aff'd on other grounds* 79 M.J. 168 (C.A.A.F. 2019) (holding that "[f]ar from being a unique PTA term, [provision that convening authority could withdraw from the agreement upon appellate determination that plea was improvident] was simply a restatement of the CA's authority set forth in R.C.M. 705(d)(4)(B) to withdraw from an agreement upon an appellate decision finding appellant's plea improvident"); *United States v. Von Bergen*, 67 M.J. 290, 294 (C.A.A.F. 2009) ("As the military judge could not have accepted an improvident plea, the pretrial agreement was subject to the first cancellation term.").

Indeed, as we previously noted in *Stout*, R.C.M. 705(e)(4)(B) codifies this principle:

> The convening authority may withdraw from a plea agreement at any time before substantial performance by the accused of promises contained in the agreement . . . or if findings are set aside because a plea of guilty entered pursuant to the agreement is held improvident on appellate review.

Applied here, given our finding that appellant was improvident of Specification 2 of Charge V, the Convening Authority may now elect to withdraw from the Plea Agreement and proceed to trial on all of the specifications and charges to which appellant pled guilty. On the other hand, given that we have exercised our discretion to dismiss Charge III and its specification and Charge IV and its specification with prejudice, even if the Convening Authority withdraws from the Plea Agreement, the government still is precluded from moving forward on those two charges and specifications.

LIMITED REMAND ORDER

Rule for Courts-Martial 810(f)(1) provides that:

> A Court of Criminal Appeals may order remand for additional fact finding, or for other reasons, in order to address a substantial issue on appeal. A remand under this subsection is generally not appropriate to determine facts or investigate matters which could, through a party's exercise of reasonable diligence, have been investigated or considered at trial. Such orders shall be directed to the Chief Trial Judge. The Judge Advocate General, or his or her delegate, shall designate a general court-martial convening authority who shall provide support for the hearing.

See also UCMJ Art. 66(f)(3) ("If the Court of Criminal Appeals determines that additional proceedings are warranted, the Court may order a hearing as may be necessary to address a substantial issue . . . .").

As described above, having now set aside Specification 2 of Charge V, pursuant to the express language of the Plea Agreement and R.C.M. 705(e)(4)(b) we are at an impasse until a determination is made as to whether the Convening Authority for the Seventh Army Training Command wants to withdraw from the plea agreement. Accordingly, pursuant to Rule for Court-Martial (R.C.M.) 810(f)(1) and UCMJ Article 66(f)(3), this case is remanded to the Chief Trial Judge in order to address a substantial issue on appeal, specifically:

> Given our ruling SETTING ASIDE Specification 2 of Charge V because appellant was not provident, does the Convening Authority for the Seventh Army Training Command wish to exercise his or her discretion, pursuant to the Plea Agreement and R.C.M. 705(e)(4)(B), to withdraw from the Plea Agreement?

We are cognizant that Brigadier General Hilbert, the Convening Authority for the Seventh Army Training Command who signed the Plea Agreement, is no longer serving in that capacity. Our fact-finding question is directed more generally to the "office" of the Convening Authority, to allow the officer currently filling that role to exercise his or her discretion to withdraw from the Plea Agreement.

In addition, we note that in remanding this case to the Chief Trial Judge for what was formerly referred to as a *DuBay* fact finding hearing,[7] we are cognizant that R.C.M. 810(f)(1) provides the Chief Trial Judge and The Judge Advocate General with the discretion as to where the fact-finding hearing should be held, and we in no way intend to interfere with that discretion. To put it another way, our order is simply directing a fact-finding hearing to get the answer to one question, and we leave the logistics of when and where that hearing occurs to the Chief Trial Judge and The Judge Advocate General.

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[7] Prior to implementation of the Military Justice Act of 2016 on 1 January 2019, we would remand for fact-finding hearings pursuant to *United States v. DuBay*, 17 C.M.A. 147 (1967). As part of the Military Justice Act of 2016, however, Congress enacted Article 66(f)(3), which as noted above provides that, "[i]f the Court of Criminal Appeals determines that additional proceedings are warranted, the Court may order a hearing as may be necessary to address a substantial issue, subject to such limitations as the Court may direct and under such regulations as the President may prescribe." The President prescribed the process for ordering such a hearing in Rule for Courts-Martial 810(f).

To reiterate, other than setting aside Specification 2 of Charge V, at this point we are *not* making any ruling with respect to the findings of guilt pertaining to any of the remaining charges and specifications to which appellant pled guilty. Indeed, we will not take any further action on the remaining findings in this case until after we receive the answer from the Chief Trial Judge as to whether or not the Convening Authority for the Seventh Army Training Command wishes to withdraw from the Plea Agreement. Likewise, given the very limited scope of our remand, the Convening Authority for the Seventh Army Training Command, or whichever convening authority is directed to provide support for this remand, will *not* have the authority or jurisdiction to take any further action on any of the remaining charges and specifications in this case. *See United States v. Carter*, 76 M.J. 293, 295-96 (C.A.A.F. 2017) ("But even when acting on remand, a convening authority may still only take action 'that conforms to the limitations and conditions prescribed by the remand.'") citing *United States v. Montesinos*, 28 M.J. 38, 42 (C.M.A. 1989). *See also* Article 66(f)(3), UCMJ (remand hearings shall be "subject to such limitations as the Court may direct and under such regulations as the president may prescribe.")

In sum, if in response to our Order the Convening Authority for the Seventh Army Training Command indicates that he or she is electing to withdraw from the Plea Agreement, we will issue a ruling providing that Convening Authority, or any other convening authority, with the jurisdiction to proceed with a rehearing on all of the specifications and charges to which appellant pled guilty, including Specification 2 of Charge V. On the other hand, if the Convening Authority for the Seventh Army Training Command elects *not* to withdraw from the Plea Agreement, this Court will issue a further ruling addressing the remaining specifications and sentence.

Senior Judge PENLAND and Judge MORRIS concur.

FOR THE COURT:

[redacted]

JAMES W. HERRING, JR.
Clerk of Court