UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
COOK, TELLITOCCI, and HAIGHT
Appellate Military Judges

UNITED STATES, Appellee
v.
Private E1 JORDAN J. JONES
United States Army, Appellant

ARMY 20110974

Headquarters, I Corps (Rear) (Provisional) (trial)
Headquarters, I Corps (new recommendation and action)
David L. Conn, Military Judge
Colonel Kurt A. Didier, Staff Judge Advocate (trial and recommendation)
Colonel William R. Martin, Staff Judge Advocate (new recommendation)
Colonel Randall J. Bagwell, Staff Judge Advocate (new addendum and supplementary new addendum)

For Appellant: Colonel Kevin Boyle, JA; Captain Michael J. Millios, JA.

For Appellee: Pursuant to A.C.C.A. Rule 15.2, no response filed.

3 March 2015

SUMMARY DISPOSITION ON FURTHER REVIEW

HAIGHT, Judge:

On 31 December 2013, this court set aside the convening authority's action[1] in this case and returned the record to The Judge Advocate General for remand to the same or a different convening authority for a new staff judge advocate recommendation (SJAR) and convening authority action. *United States v. Jones*, ARMY 20110974, 2013 CCA LEXIS 1080 (Army Ct. Crim. App. 31 Dec. 2013)

[1] In the original action, the convening authority approved the adjudged sentence of a bad-conduct discharge, confinement for four (4) years, and forfeiture of all pay and allowances, and also credited appellant with 168 days of confinement.

(summ. disp.).[2] This new action was completed on 12 August 2014. With the benefit of an accurate Result of Trial and SJAR, the convening authority approved the recommendation of the staff judge advocate to "approve only so much of the adjudged sentence as provides for total forfeitures of all pay and allowances, four (4) years confinement and a bad-conduct discharge."[3] The record is now before us for further review.

We have considered the entire record, including the previous assignment of error raised in appellant's initial pleading, as well as those issues personally raised by appellant pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).[4] None of these issues merits discussion or relief. However, one additional matter does.

Providency of Appellant's Guilty Plea to Willful Disobedience of a Superior Commissioned Officer

In accordance with his pleas, the military judge convicted appellant of a host of offenses,[5] including one specification of willfully disobeying a superior

[2] In our initial 31 December 2013 summary decision, we noted that we were "unable to determine whether the convening authority was aware of the findings with respect to The Charge and its specifications, and we [did] not know if he approved the finding of guilty to Specification 2 of The Charge." *Jones*, 2013 CCA LEXIS 1080, at *4. This was due to the omission of The Charge and its two specifications from the staff judge advocate's recommendation to the convening authority as well as the Result of Trial (The Charge consisted of two specifications of Article 134, UCMJ, for wrongfully communicating a threat and obstructing justice. The remaining offenses were contained in Additional Charges I-VIII). *Id*. at *3-4; *see also* Rules for Courts-Martial 1107(c), 1106(d)(3); *United States v. Diaz*, 40 M.J. 335, 337-38 (C.M.A. 1994).

[3] The convening authority also credited appellant with 168 days against the sentence to confinement.

[4] Upon receipt of the new review and action, no further pleadings were filed by appellate counsel.

[5] The military judge convicted appellant, pursuant to his pleas, of attempted larceny, conspiracy to commit larceny (nine specifications), failure to repair (eight specifications), absence without leave (two specifications), willfully disobeying a superior commissioned officer, larceny (sixteen specifications), obstruction of justice, and bank fraud, in violation of Articles 80, 81, 86, 90, 121, and 134,

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commissioned officer, in violation of Article 90, UCMJ. In our previous decision, we noted that "the military judge, during the providence inquiry, neither defined 'willful disobedience' for appellant nor provided the Military Judges' Benchbook explanation of that element as 'an intentional defiance of authority.'" *Jones*, 2013 CCA LEXIS 1080, at *1 n.1. However, upon remand, the convening authority elected not to address this concern. We will now do so ourselves.

The Specification of Additional Charge VII alleged that appellant, "having received a lawful command from [Captain RC], his superior commissioned officer, then known by [appellant], to be his superior commissioned officer, to 'remain within the limits of Joint Base Lewis-McChord, Washington' and to 'relocate from your off-post residence and move into an assigned barracks room' . . . did . . . willfully disobey the same."

During the providence inquiry, the military judge listed the elements[6] of Article 90, UCMJ, and also defined "superior commissioned officer" and further explained that "an order requires immediate compliance . . . [unless] it indicate[s] a delay is authorized or directed."

Additionally, the military judge elicited a factual basis from appellant establishing that appellant had indeed received the order from Captain (CPT) RC and that he violated CPT RC's order by failing to move into an assigned barracks room, instead remaining in his off-post residence. Although appellant articulated that he "chose not to" obey the order, he merely agreed with the military judge's labeling of the disobedience as "willful" and "intentional." *See United States v. Outhier*, 45 M.J. 326, 331 (C.A.A.F. 1996). As previously noted, the military judge neither defined "willful disobedience" for appellant, nor did he provide the Military Judges' Benchbook explanation of that element as "an intentional defiance of authority." *See MCM*, pt. IV, ¶ 14.c.(2)(f); Dep't of Army, Pam. 27-9, Legal Services: Military Judges' Benchbook, para. 3-14-2.d (1 Jan. 2010).

We review a military judge's decision to accept a guilty plea for an abuse of discretion. *United States v. Inabinette*, 66 M.J. 320, 322 (C.A.A.F. 2008). A guilty plea will only be set aside if we find a substantial basis in law or fact to question the

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Uniform Code of Military Justice, 10 U.S.C. §§ 880, 881, 886, 890, 921, 934 (2006) [hereinafter UCMJ].

[6] The elements as explained by the military judge mirror those found in the *Manual for Courts-Martial. Manual for Courts-Martial, United States* (2008 ed.) [hereinafter *MCM*] pt. IV, ¶ 14.b.(2).

plea. *Id.* (citing *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991)). "It is an abuse of discretion for a military judge to accept a guilty plea without an adequate factual basis to support it" or "if the ruling is based on an erroneous view of the law." *United States v. Weeks*, 71 M.J. 44, 46 (C.A.A.F. 2012); *see also Outhier*, 45 M.J. 326; Rule for Courts-Martial 910(e). A military judge's failure to explain the relevant elements is reversible error, unless "it is clear from the entire record that the accused knew the elements, admitted them freely, and pleaded guilty because he was guilty." *United States v. Jones*, 34 M.J. 270, 272 (C.M.A. 1992).

Here, by failing to further explain or define "willful disobedience" or "intentional defiance," the military judge omitted a critical dimension of Article 90—one that also reflects the fundamental distinction between this offense and Article 92(2), "Failure to obey any lawful order." *See MCM*, pt. IV, ¶¶ 14.c.(2)(f), 16.(b)(2); *United States v. Phillips*, 74 M.J. 20, 22 (C.A.A.F. 2015) (upholding guilty plea conviction to an Article 90 offense, specifically noting the military judge's explanation of the "nature of the offense" to appellant included, "'[w]illful disobedience' means an intentional defiance of authority."); *see also United States v. Battle*, 27 M.J. 781, 783 (A.F.C.M.R. 1988) (The aggravating element of willful disobedience, defined as intentional defiance, constitutes a "critical difference" between the disobedience offenses charged under Articles 90 and 91 as opposed to those charged under Article 92.); *United States v. Bartsh*, ARMY 20111104, 2013 CCA LEXIS 1081, at *8 (Army Ct. Crim. App. 31 Dec. 2013) (mem. op.) ("The nature of the disobedience contemplated in Article 90, versus that of Article 92, is markedly different.").

Part and parcel of the military judge's failure to fully define the "nature of the disobedience" required by Article 90 was appellant's inadequate recitation of facts supporting his guilt of this component of the offense. Instead, appellant merely stated that although he was aware of CPT CR's order "he chose not to" comply with it, explaining that he had "several things" in his off-post residence—to include a dog and a 135-gallon fish tank—prompting him not to move into the barracks within the time frame dictated by CPT CR. In fact, appellant and the military judge ultimately agreed that CPT CR's order posed a dilemma for appellant concerning his pets, "*driving* [his] decision to disobey." (emphasis added). No further inquiry into how this disobedience might still amount to "intentional defiance" was undertaken. Thus, in the absence of a complete explanation of the nature of the charged offense, as well as a lack of adequate factual support,[7] we find a substantial basis in law and fact to question appellant's plea to this offense.

[7] The stipulation of fact is devoid of any support for this charge and instead focuses on the vast array of financial and property crimes committed by appellant. While

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Accordingly, with respect to the charge of willful disobedience, we will affirm only a finding of guilty to the lesser included offense of failure to obey an order, in violation of Article 92, UCMJ. *See United States v. Ranney*, 67 M.J. 297, 298-99 (C.A.A.F. 2009) *overruled in part on other grounds by Phillips*, 74 M.J. at 23; *United States v. Wartsbaugh*, 21 U.S.C.M.A. 535, 541, 45 C.M.R. 309, 315 (1972); *Bartsh*, 2013 CCA LEXIS 1081 at *9-10.

CONCLUSION

The finding of guilty to the Specification of Additional Charge VII is set aside. However, we affirm a finding of guilty to the lesser included offense of failure to obey an order in violation of Article 92(2), UCMJ. The remaining findings of guilty are AFFIRMED.

We are able to reassess the sentence on the basis of the error noted and do so after conducting a thorough analysis of the totality of circumstances presented by appellant's case and in accordance with the principles articulated in *United States v. Winckelmann*, 73 M.J. 11, 15-16 (C.A.A.F. 2013) and *United States v. Sales*, 22 M.J. 305 (C.M.A. 1986). We find no dramatic change in the penalty landscape that might cause us pause in reassessing appellant's sentence. Appellant was tried and sentenced by a military judge. Further, the nature of the remaining offenses still captures the gravamen of the original offenses and the circumstances surrounding appellant's conduct. Finally, based on our experience, we are familiar with the remaining offenses so that we may reliably determine what sentence would have been imposed at trial. We are confident that based on the entire record and appellant's course of conduct, the military judge sitting alone as a general court-martial, would have imposed a sentence of at least that which was adjudged.

Reassessing the sentence based on the noted error and the remaining findings of guilty, we AFFIRM the sentence as adjudged. We find this reassessed sentence is not only purged of any error but is also appropriate. All rights, privileges, and property, of which appellant has been deprived by virtue of that portion of the findings set aside by our decision, are ordered restored.

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this is understandable, it is nonetheless unhelpful to the government's case on appeal.

Senior Judge COOK and Judge TELLITOCCI concur.

FOR THE COURT:

MALCOLM H. SQUIRES, JR.
Clerk of Court