

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
MERCK, CASIDA, and TRANT
Appellate Military Judges

UNITED STATES, Appellee

v.

Specialist RAHEIM J. SALTERS (AKA RAHEIM J. JACKSON)
United States Army, Appellant

ARMY 9800893

Fort Carson
R. J. Hough, Military Judge

For Appellant: Colonel John T. Phelps II, JA; Major Leslie A. Nepper, JA; Captain Angelines McCaffrey, JA (on brief).

For Appellee: Colonel Russell S. Estey, JA; Captain Katherine M. Kane, JA (on brief).

13 April 2000

MEMORANDUM OPINION

CASIDA, Judge:

A military judge, sitting as a general court-martial, convicted appellant, pursuant to his pleas, of attempted larceny, willful disobedience of a warrant officer (two specifications), making false official statements (four specifications), larceny (two specifications), uttering checks without sufficient funds and with intent to defraud, making and uttering worthless checks by dishonorably failing to maintain funds (five specifications), altering a public record, wrongful possession of a false military identification card with an intent to defraud, breaking restriction, impersonating a commissioned officer, dishonorably failing to pay a debt, and obtaining services under false pretenses, in violation of Articles 80, 91, 107, 121, 123a, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 880, 891, 907, 921, 923a, and 934 [hereinafter UCMJ]. The adjudged sentence was a dishonorable discharge, confinement for eighty-eight months, forfeiture of all pay and allowances, and reduction to the grade of Private E1. In compliance with the pretrial agreement, the convening authority approved the adjudged sentence, but suspended the adjudged confinement in excess of five years for five years. Appellant was credited with 102 days of pretrial confinement credit against the sentence to confinement.

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This case is before the court for mandatory review pursuant to Article 66, UCMJ. We have considered the record of trial, appellant's two assignments of error, the matters personally raised by appellant pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), and the government's response thereto.

Appellant asserts that his plea of guilty to one of the bad check specifications (Specification 2 of Charge VI) was improvident. We agree. Appellant was charged originally with violating Article 123a, UCMJ, by uttering a worthless check in the amount of \$419.97 to Staff Sergeant (SSG) Reilly. He pled guilty to the lesser included offense of making and uttering a worthless check by failing to maintain sufficient funds, in violation of Article 134, UCMJ. The check was written in response to a complaint from SSG Reilly that appellant's girlfriend was driving appellant's car, which was not insured, and caused an accident resulting in damage to SSG Reilly's car. Appellant uttered the check to cover SSG Reilly's damages. During the providence inquiry for this offense, appellant initially told the military judge that he knew at the time he uttered the check that he did not have money in the account to cover it and that he was unconcerned about the status of the account. Upon further inquiry, he said that he was not sure how much money was in the account, that his military pay was directly deposited into the account twice monthly, and that he had cautioned SSG Reilly to check with the bank's branch manager before cashing the check to ensure there was money to cover the check. He was unable to check the status of the account himself because he was restricted to his unit's area and prohibited from using the telephone without explicit permission. When making the check, appellant left the name of the payee blank, expecting the branch manager to fill it in if there was money on deposit to cover it. A photocopy of the front of the check in the record of trial shows that the line for the payee's name remains blank and shows none of the typical bank stamps indicating that the check had been rejected by the bank.

Before this court can affirm a plea of guilty to an offense, we must be satisfied that the military judge conducted a thorough and detailed inquiry of the accused to establish a sufficient factual basis for each and every element of the offense. See *United States v. Care*, 18 U.S.C.M.A. 535, 40 C.M.R. 247 (1969); cf. *United States v. Lloyd*, 46 M.J. 19, 23 (1997)(dicta). If the accused sets forth matter inconsistent with his plea of guilty, the military judge must reject the plea of guilty and enter a plea of not guilty on behalf of the accused. See UCMJ art. 45(a); Rule for Courts-Martial 910 and its discussions. An accused's willingness to admit guilt cannot make an otherwise defective plea provident. See *United States v. Peele*, 46 M.J. 866 (Army Ct. Crim. App. 1997); *United States v. Watkins*, 32 M.J. 527 (A.C.M.R. 1990).

To be guilty of making and uttering a worthless check under Article 134, the accused's failure to place or maintain sufficient funds on deposit to cover the check

must be dishonorable. *See Manual for Courts-Martial, United States* (1995 edition) [hereinafter *MCM*], Part IV, para. 68. To constitute a “dishonorable failure,” “[t]he failure [] must be characterized by deceit, evasion, false promises, or other distinctly culpable circumstances indicating a deliberate [failure] or grossly indifferent attitude toward one’s just obligations.” *MCM*, Part IV, para. 71c; *see also United States v. Groom*, 12 U.S.C.M.A. 11, 30 C.M.R. 11, 13 (1960).

In response to appellant’s argument, the government argues that the plea was provident because appellant’s nonchalant attitude about his bank accounts and his prior history of writing bad checks reflect bad faith and gross indifference toward his obligations. We find, however, that, having expressly warned SSG Reilly that the check might not clear the bank and, having given SSG Reilly instructions to check the account before attempting to cash the check, appellant did not display that level of dishonorable conduct necessary to sustain his plea of guilty.

Appellant next argues that his plea of guilty to altering a public record (Specification 1 of Charge VII), a Leave and Earnings Statement (LES), as defined in *MCM*, Part IV, para. 99, was improvident and should have been rejected. The government concedes error and we agree. This charge involves appellant’s alteration of a copy of an LES pertaining to a major in appellant’s unit. Appellant replaced the major’s name with his own and deleted the Social Security Number from the LES. Then, while impersonating a second lieutenant, he used the altered LES to obtain credit for the lease of a vehicle. He then uttered a worthless check for the down payment.

This offense is based upon 18 U.S.C. § 2071(a), *cf. MCM*, app. 23, Punitive Article 134—(Public record: altering, concealing, removing, mutilating, obliterating, or destroying) analysis, at A 23-20, which is intended to preserve the integrity of public records placed in the custody of a public official, *see United States v. Rosner*, 352 F. Supp. 915 (S.D.N.Y. 1972). *See United States v. Oglivie*, 29 M.J. 1069, 1071 (A.C.M.R. 1990); *United States v. McCoy*, 47 M.J. 653, 654-55 (Army Ct. Crim. App. 1997), *pet. review denied*, ___ M.J. ___, No. 98-0377/AR, 1998 CAAF LEXIS 2215, at *1 (Sept. 28, 1998). The offense of altering, concealing, removing, etcetera, a public record does not pertain to photocopies of public records when the photocopies are not themselves maintained as a public record in the custody of a public official and where there is no attempt to use the photocopy to corrupt the official copy. Appellant found the LES somewhere in his unit and altered it for his own purposes; the LES was not the official version maintained in official custody. His actions could have no affect on the original document retained in official files.

Appellant remains convicted of eighteen specifications, most of which involve acts of deceit, fraud and outright theft or attempted theft of thousands of dollars. Among his many delicts, he uttered approximately sixty worthless checks in a

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cumulative amount over \$15,000.00. The maximum authorized confinement for the remaining findings of guilty totals over 148 years.

The matters raised by appellant pursuant to *Grostefon*, 12 M.J. 431, are without merit.

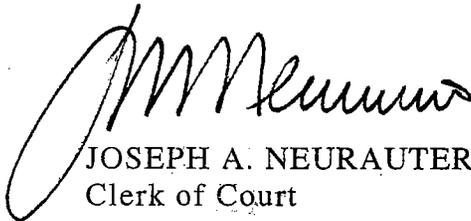
DECISION

The findings of guilty of Specification 2 of Charge VI (uttering the check to SSG Reilly) and Specification 1 of Charge VII (altering the LES) are set aside and those specifications are dismissed. The remaining findings of guilty are affirmed.

Reassessing the sentence on the basis of the errors noted, the entire record, and applying the principles of *United States v. Sales*, 22 M.J. 305 (C.M.A. 1986), the court affirms the sentence.

Senior Judge MERCK and Judge TRANT concur.

FOR THE COURT:



JOSEPH A. NEURAUTER
Clerk of Court