

# UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before  
OLMSCHIED, GALLUP, and KIRBY  
Appellate Military Judges

**UNITED STATES, Appellee**  
**v.**  
**Specialist RICHIE R. MAISONET**  
**United States Army, Appellant**

ARMY 20060252

XVIII Airborne Corps and Fort Bragg  
Grant C. Jaquith, Military Judge  
Colonel W. Renn Gade, Staff Judge Advocate

For Appellant: Colonel John T. Phelps II, JA; Major Billy B. Ruhling II, JA; Major Tyesha E. Lowery, JA (on brief).

For Appellee: Colonel John W. Miller II, JA; Lieutenant Colonel Michele B. Shields, JA; Captain Magdalena A. Acevedo, JA; Captain Jaired D. Stallard, JA (on brief).

7 December 2006

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MEMORANDUM OPINION  
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KIRBY, Judge:

A military judge sitting as a special court-martial convicted appellant, pursuant to his pleas, of absence without leave (AWOL) (two specifications) and missing movement, in violation of Articles 86 and 87, Uniform Code of Military Justice, 10 U.S.C. §§ 886 and 887 [hereinafter UCMJ]. The convening authority approved the adjudged sentence of a bad-conduct discharge, confinement for six months, forfeiture of \$800.00 pay per month for six months, and reduction to Private E1.

This case is before the court for review pursuant to Article 66, UCMJ. We have considered the record of trial, appellant's assignment of error, and the government's reply thereto. Appellant asserts, and the government concedes, that the military judge erred in accepting appellant's plea of guilty to being AWOL from 4 April 2005 until 25 January 2006. We agree.

## DISCUSSION

A finding of guilty based on a guilty plea will not be set aside on appeal unless the record of trial shows “a substantial basis in law and fact for questioning the guilty plea.” *United States v. Phillipe*, 63 M.J. 307, 309 (C.A.A.F. 2006) (internal quotations and citations omitted). “For a guilty plea to be provident, the accused must be convinced of, and be able to describe, all of the facts necessary to establish guilt.” *United States v. O’Connor*, 58 M.J. 450, 453 (C.A.A.F. 2003). “The military judge must elicit ‘factual circumstances as revealed by the accused himself [that] objectively support that plea[.]’” *Id.* (quoting *United States v. Jordan*, 57 M.J. 236, 238 (C.A.A.F. 2002)). Furthermore, “[i]f an accused sets up matter inconsistent with the plea of guilty at any time during the proceeding, the military judge must either resolve the apparent inconsistency or reject the plea.” *Phillipe*, 63 M.J. at 309 (internal quotations and citations omitted).

Appellant was charged with, and pled guilty to, *inter alia*, being AWOL from 4 April 2005 until 25 January 2006. An element to an AWOL offense is “[t]hat the absence was for a certain period of time.” *Manual for Courts-Martial* [hereinafter *MCM*], *United States* (2005 ed.), Part IV, para. 10b(3)(c). One manner in which an AWOL can be terminated is through voluntary surrender to military authorities. *Phillipe*, 63 M.J. at 309-10; *see also MCM*, Part IV, para. 10c(10)(a). During the providence inquiry, appellant told the military judge that although he did not arrive back to his unit until 25 or 26 January 2006, he turned himself into a recruiting station in Massachusetts on 21 January 2006. One of the recruiters at the station arranged for appellant’s flight back to his unit. Appellant appears, then, to have voluntarily surrendered to military authorities on 21 January 2006, thus terminating his AWOL. This is inconsistent with appellant’s plea of guilty and provides a substantial basis for us to question appellant’s plea. We will amend Specification 2 of Charge I to conform to the facts elicited during the providence inquiry.

## CONCLUSION

Specification 2 of Charge I is amended as follows:

In that Specialist (E4) Richie R. Maisonet, US Army, did, on or about 4 April 2005, without authority, absent himself from his unit, to wit: A/51st Signal Battalion (Airborne), located at Fort Bragg, North Carolina, and did remain so absent until on or about 21 January 2006.

The findings of guilty of Specification 2 of Charge I, as amended, and the remaining findings of guilty are affirmed. Reassessing the sentence on the basis of

MAISONET – ARMY 20060252

the error noted, the entire record, and applying the principles of *United States v. Sales*, 22 M.J. 305 (C.M.A. 1986), the sentence is affirmed.

Senior Judge OLMSCHEID and Judge GALLUP concur.



FOR THE COURT:

A handwritten signature in black ink, which appears to read "Malcolm H. Squires, Jr.".

MALCOLM H. SQUIRES, JR.  
Clerk of Court