

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
LIND, KRAUSS, and PENLAND
Appellate Military Judges

UNITED STATES, Appellee
v.
Specialist LADARREN M. STEVENSON
United States Army, Appellant

ARMY 20131000

Headquarters, Fort Bliss
Douglas K. Watkins, Military Judge
Colonel Karen H. Carlisle, Staff Judge Advocate

For Appellant: Colonel Kevin Boyle, JA; Major Yolanda McCray Jones, JA; Captain Robert H. Meek, III, JA (on brief).

For Appellee: Major A.G. Courie III, JA; Major John K. Choike, JA; Captain Scott L. Goble, JA (on brief).

2 July 2015

SUMMARY DISPOSITION

LIND, Senior Judge:

A military judge sitting as a general court-martial convicted appellant, pursuant to his pleas, of one specification of larceny of military property of a value more than \$500; one specification of larceny of property of a value more than \$500; and one specification of obtaining services under false pretenses in violation of Articles 121 and 134, Uniform Code of Military Justice [hereinafter UCMJ], 10 U.S.C. §§ 921, 934 (2006). The military judge sentenced appellant to a bad-conduct discharge and confinement for seven months. The convening authority approved only so much of the sentence as provided for a bad-conduct discharge and confinement for five months.

We review this case under Article 66, UCMJ. Appellant raises one assignment of error that warrants discussion and relief.

FACTS

Shortly after being assigned to Fort Bliss, Texas, appellant met Ms. EO through a woman he was dating at the time. Appellant's girlfriend at the time made it clear that Ms. EO wanted to marry a soldier so that she could receive medical benefits that would cover an upcoming gastric bypass. Appellant married Ms. EO on 18 July 2011 for the purposes of collecting basic allowance for housing (BAH) that would result from appellant's married status as well as obtaining medical services for Ms. EO. The marriage was entered into explicitly for these purposes and appellant never lived with Ms. EO as husband and wife. On or about 27 September 2011, appellant submitted a Department of the Army Form (DA Form) 5960, "Authorization to Start, Stop, or Change Basic Allowance for Quarters (BAQ) And/Or Variable Housing Allowance (VHA)" to the Fort Bliss military pay office, wherein he requested to start receiving BAH with an effective date of 18 July 2011. Appellant collected BAH at the with-dependents rate through at least December 2012. Additionally, Ms. EO obtained medical care through the designated Tricare provider based on her status as a dependent. Appellant was charged with, *inter alia*, larceny of military property of a value in excess of \$500 on divers occasions based on his monthly receipt of BAH.

LAW AND ANALYSIS

We review issues of factual and legal sufficiency *de novo*. *United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002). The test for factual sufficiency is whether, after weighing the evidence and making allowances for not having personally observed the witnesses, this court is convinced of appellant's guilt beyond a reasonable doubt. *Id.* The test for legal sufficiency is whether, considering all of the evidence in the light most favorable to the government, a reasonable fact-finder could have found all of the essential elements of the offense beyond a reasonable doubt. *United States v. Winckelmann*, 70 M.J. 403, 406 (C.A.A.F. 2011) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

There is no evidence in the record that appellant committed larceny of BAH *on divers occasions*. The single action that resulted in appellant's receipt of BAH was his submission of the DA Form 5960 affirming he was entitled to BAH as a result of his marriage. *See United States v. Hines*, 73 M.J. 119, 121 (C.A.A.F. 2014) ("[T]he formulation of a plan or scheme or the setting up of a mechanism which, when put into operation, will result in the taking or diversion of sums of money on a recurring basis, will produce but one crime." (quoting *United States v. Billingslea*, 603 F.2d 515, 520 (5th Cir. 1979))) (alteration in original) (internal quotation marks omitted). As such, we find appellant committed a single larceny of BAH totaling over \$500.

CONCLUSION

We affirm only so much of the finding of guilty of Specification 1 of Charge I as provides:

Specification 1: In that Specialist LaDarren M. Stevenson, U.S. Army, did, at or near Fort Bliss, Texas, between on or about 1 July 2011 to on or about 1 January 2013, steal Basic Allowance for Housing (BAH) entitlement, military property, of a value of more than \$500, the property of the United States Government.

The remaining findings of guilty are AFFIRMED. Reassessing the sentence on the basis of the error noted, the entire record, and applying the principles of *United States v. Sales*, 22 M.J. 305, 307-08 (C.M.A. 1986) and the factors set forth in *United States v. Winckelmann*, 73 M.J. 11, 15-16 (C.A.A.F. 2013), we are confident the judge would have sentenced appellant to the same sentence absent the error. The approved sentence is AFFIRMED.

Judge KRAUSS and Judge PENLAND concur.



FOR THE COURT:

A handwritten signature in cursive script that reads "Mathers".

SHELLEY GOODWIN-MATHERS
Acting Clerk of Court