

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
TOZZI, CAMPANELLA, and CELTNIIEKS
Appellate Military Judges

UNITED STATES, Appellee
v.
Specialist NATHAN C. WILSON
United States Army, Appellant

ARMY 20140135

Headquarters, United States Army Maneuver Center of Excellence
Charles A. Kuhfahl, Jr., Military Judge
Lieutenant Colonel Charles C. Poché, Staff Judge Advocate

For Appellant: Colonel Kevin Boyle, JA; Major Amy E. Nieman, JA; Captain Brian D. Andes, JA (on brief).

For Appellee: Colonel Mark H. Sydenham, JA; Major John K. Choike, JA; Captain John Gardella, JA (on brief).

18 November 2015

SUMMARY DISPOSITION

CAMPANELLA, Judge:

A military judge sitting as a general court-martial convicted appellant, consistent with his pleas, of two specifications of wrongful possession of a controlled substance with intent to distribute and, one specification of larceny of military property of a value greater than \$500, and contrary to his pleas, of one specification of housebreaking in violation of Articles 112a, 121, and 130, Uniform Code of Military Justice, 10 U.S.C. §§ 912a, 921, 930 (2012) [hereinafter UCMJ]. The military judge sentenced appellant to a bad-conduct discharge, confinement for twenty-one months, and reduction to the grade of E-1. The convening authority approved the sentence as adjudged.

Appellant's case is before this court for review under Article 66, UCMJ. Appellate counsel assigned one error to this court, and appellant personally raised matters pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982). The

assigned error warrants discussion and relief. The matters raised pursuant to *Grostefon* are without merit.

BACKGROUND

In the Specification of The Additional Charge, appellant was charged with, pleaded guilty to, and convicted of stealing batteries, military property, “on divers occasions,” of a total value greater than \$500. At the outset, the military judge explained the elements and definitions for the offense. The military judge also defined the term “on divers occasions.” Appellant stated he understood the elements and definitions. The military judge then engaged in the following colloquy:

MJ: Okay, so what exactly was your involvement on at least two occasions?

ACC: I was the person that took them to the scrap yard, sir.

MJ: So, were you actually part of taking them out of the Motor pool on at least two occasions during this time period?

ACC: Yes, sir, I was a part of taking them out of the Motor pool, sir.

MJ: And on the occasions when you were part of taking them out of the Motor pool you would then take them down to, on at least two occasions, you took those batteries to the scrap yard and sold them?

ACC: Yes, sir.

MJ: And how much were those batteries worth that you took and that you sold?

ACC: \$759.88, sir.

...

MJ: Do you believe that the batteries that you took and that you sold were worth more than \$500.00?

ACC: Yes, sir.

LAW AND DISCUSSION

We review a military judge's decision to accept a plea of guilty for an abuse of discretion by determining whether the record as a whole demonstrates a substantial basis in law and fact for questioning the guilty plea. *United States v. Inabinette*, 66 M.J. 320, 322 (C.A.A.F. 2008); UCMJ art. 45; Rule for Courts-Martial [hereinafter R.C.M.] 910(e). The record of trial must reflect not only that the elements of each offense have been explained to the accused, but also "make clear the basis for a determination by the military trial judge . . . whether the acts or the omissions of the accused constitute the offense . . . to which he is pleading guilty." *United States v. Care*, 18 U.S.C.M.A. 535, 541, 40 C.M.R. 247, 253 (1969). The stipulation of fact can provide an additional factual basis upon which to satisfy this requirement. *Id.*

While appellant acknowledges that the total value of batteries stolen exceeded \$500, he now asserts it is unclear from the record (1) whether he stole batteries on "divers occasions," and (2) if the value of the batteries stolen on any one occasion exceeded \$500. We agree the providence inquiry does not clearly establish that appellant stole batteries of a value of \$500 on one or more occasion. To assist in our review of the adequacy of the plea, we next look to the stipulation of fact. The stipulation of fact provided as follows:

(Additional Charge) Between on or about 1 August 2013 and 6 October 2013, [appellant] stole batteries from the 3d Brigade Special Troops Battalion Motor pool. On 27 September 2013, [appellant] sold these batteries to the scrap yard Schnitzer Southeast, 420 10th Avenue, Columbus, Georgia. He received \$759.88 for the sale of these batteries.

Reading the providence inquiry and the foregoing paragraph contained in the stipulation of fact together, we conclude beyond a reasonable doubt appellant stole and sold batteries on at least one occasion, in an amount exceeding \$500 – specifically, on or about 27 September 2013 in the amount of \$759.88. Accordingly, we will amend the larceny specification by removing the words "on divers occasions."

CONCLUSION

We affirm only so much of the findings of guilty of the Specification of The Additional Charge as finds that:

[Appellant], U.S. Army, did, at or near Fort Benning, Georgia, between on or about 1 August 2013 and on or about 6 October 2013, steal batteries, military property, of a total value greater than \$500, the property of the U.S. Army.

The remaining findings of guilty are AFFIRMED.

Reassessing the sentence on the basis of the error noted, the entire record, and in accordance with the principals of *United States v. Winckelmann*, 73 M.J. 11, 15-16 (C.A.A.F. 2013), the court AFFIRMS the sentence. All rights, privileges, and property of which appellant has been deprived by virtue of that portion of his findings being set aside by this decision are ordered restored.

Senior Judge TOZZI and Judge CELTNIIEKS concur.



FOR THE COURT:

A handwritten signature in black ink, appearing to read "Malcolm H. Squires, Jr.", written in a cursive style.

MALCOLM H. SQUIRES, JR.
Clerk of Court