

# UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before  
KERN, YOB, and ALDYKIEWICZ  
Appellate Military Judges

**UNITED STATES, Appellee**  
**v.**  
**Private E1 CASSANDRA M. RILEY**  
**United States Army, Appellant**

ARMY 20100084

Headquarters, Fort Hood  
Gregory A. Gross, Military Judge  
Colonel Stuart W. Risch, Staff Judge Advocate

For Appellant: Colonel Patricia A. Ham, JA; Lieutenant Colonel Imogene M. Jamison, JA; Major Richard Gorini, JA; Captain Richard M. Gallagher, JA (on brief).

For Appellee: Major Amber Roach, JA; Captain Chad M. Fisher, JA; Captain John D. Riesenberg, JA (on brief).

11 May 2012

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MEMORANDUM OPINION ON FURTHER REVIEW  
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*This opinion is issued as an unpublished opinion, as such, does not serve as precedent.*

Per Curiam:

A military judge sitting as a general court-martial convicted appellant, pursuant to her plea, of kidnapping in violation of Article 134, Uniform Code of Military Justice, 10 U.S.C. § 934 (2006) [hereinafter UCMJ]. A panel of officers sentenced appellant to a dishonorable discharge, confinement for five years, and total forfeiture of all pay and allowances. The convening authority approved the adjudged sentence.

On 7 July 2011, this court summarily affirmed the findings of guilty and sentence. On 15 November 2011, our superior court set aside this court's decision and remanded the case for our consideration of three issues newly raised by appellant. In addition, our superior court ordered this court to obtain affidavits from the trial defense counsel to respond to appellant's allegation of ineffective assistance of counsel. Following our receipt of the affidavits, on 20 January 2012, we ordered that counsel for appellant and appellee file briefs with this court on two specified

issues regarding claims of ineffective assistance of counsel and improper acceptance of a guilty plea. Of the three issues raised by appellant with our superior court, we find that none warrants relief, but the two issues this court specified warrant discussion.

## BACKGROUND

While on involuntary excess leave following a previous court-martial conviction for failing to report, false official statement, and malingering, appellant dressed in medical scrubs and entered the baby ward of Darnall Army Medical Center on Fort Hood, Texas. Appellant then entered the maternity room of a new mother and baby, and pretended to be an attending nurse. When the mother left to use the bathroom, appellant took the baby out of the room and into the hallway. After the mother returned and noticed her baby missing, she also went out of her room into the hallway. At this time appellant was placing the baby in a backpack and when the mother saw her, she told appellant to stop. Appellant responded that the baby needed to be fed and gave the baby back to the mother and left the area. Five days later, appellant was apprehended by law enforcement agents and admitted to kidnapping the baby from the hospital room.

While serving confinement after pleading guilty at her court-martial for kidnapping, appellant claims that she was informed for the first time that she would have to register as a sex offender for the kidnapping offense. Affidavits provided by appellant's two defense counsel confirm that they did not inform appellant she would have to register as a sex offender for the kidnapping offense. Moreover, the record of trial confirms that the issue of sex offender registration was not addressed during appellant's court-martial.\*

## LAW AND DISCUSSION

### A. Ineffective Assistance of Counsel Allegation

Appellant claims she was denied effective assistance of counsel when her counsel failed to inform her that she would have to register as a sex offender as a result of her guilty plea to kidnapping. Kidnapping of a minor (by a person not the parent) is among the offenses listed in Dep't of Def. Instr. 1325.7, Enclosure 27: Listing of Offenses Requiring Sex Offender Processing (17 July 2001) [hereinafter DODI] as offenses requiring sex offender processing. In *United States v. Miller*, 63 M.J. 452 (C.A.A.F. 2006), our superior court held that trial defense counsel are expected to be aware of the federal statute addressing mandatory reporting and

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\* It is likely from circumstances of this case that the issue of sex offender registration was not addressed at the court-martial because, although the charged offense is among those on the Department of Defense Instruction list of offenses requiring sex offender processing, there was no allegation of any sexual misconduct involved with the commission of this particular offense.

registration for those who are convicted of offenses within the scope of the statute and DODI 1325.7 which identifies offenses that trigger mandatory sex offender reporting. *Id.* at 459. Because of the impact that the operation of this statute and instruction may have on an accused's decisions before and at trial, and on an accused's legal obligations after conviction, our superior court has established a rule that all trial defense counsel should inform an accused prior to trial as to any charged offense listed on DODI 1325.7, and also state on the record of the court-martial that counsel has complied with this requirement. *Id.*

We review de novo whether an appellant has received effective representation. *United States v. Wean*, 45 M.J. 461, 463 (C.A.A.F. 1997) (citations omitted). In this case it is clear from the affidavits of defense counsel that they failed to comply with our superior court's rule from *Miller* by not informing appellant that her plea of guilty could trigger a requirement for sex offender registration. Moreover, the record of trial is also devoid of any mention by counsel that they complied with the requirement to inform appellant. These failures by counsel, however, are not "per se ineffective assistance of counsel," but they are circumstances we will consider in our evaluation of the allegation of ineffective assistance of counsel. *Miller* 63 M.J. at 459. For an allegation of ineffective assistance of counsel to prevail, appellant must show that (1) his counsel's performance was deficient, and (2) the deficient performance prejudiced appellant. *Strickland v. Washington*, 466 U.S. 668, 669 (U.S. 1984). We can address these two parts in either order because "appellant must meet both in order to prevail." *United States v. Green*, 68 M.J. 360, 362 (C.A.A.F. 2010).

In this case we need only address the part of the test pertaining to prejudice. "To show prejudice from ineffective assistance of counsel in a guilty plea case, an accused must show 'that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.'" *United States v. Denedo*, 66 M.J. 114, 129 (C.A.A.F. 2008) (citing *Hill v. Lockhart*, 474 U.S. 52, 59 (1985) and *United States v. Alves*, 53 M.J. 286, 289 (C.A.A.F. 2000)). Appellant claims in an affidavit that had she known about the requirement to register as a sex offender, she would not have pled guilty. This claim, however, is not objectively supported by the circumstances of her case. In addition to a confession, the government had eye-witness and video surveillance evidence of appellant's commission of the offense, along with physical evidence seized from appellant's vehicle linking her to the crime.

Moreover, appellant faced a maximum sentence of life without the possibility of parole for the charged offense, and her defense counsel was able to secure an eleven year confinement cap. As appellant's defense counsel, Major [S], stated in her affidavit, appellant expressed a "fervent desire to receive some cap on confinement." Both the strength of the government's case, including the overwhelming weight of evidence against appellant, and the favorable sentence limitation in the pretrial agreement belie appellant's assertion that she would not have pled guilty had she been informed of the requirement to register as a sex

offender. Based on all the factors set out immediately above, we find that appellant suffered no prejudice because there is no reasonable probability that she would have pled not guilty even if she had known of the sex offender registration requirement. Therefore, we find appellant was not denied effective assistance of counsel because she has failed to show prejudice under the *Strickland* test.

### **B. Military Judge's Acceptance of the Guilty Plea**

We review a military judge's decision to accept a plea of guilty "for an abuse of discretion and questions of law arising from the guilty plea de novo." *United States v. Inabinette*, 66 M.J. 320, 322 (C.A.A.F. 2008). A guilty plea will be set aside on appeal only if an appellant can show a substantial basis in law or fact to question the plea. *Id.* (citing *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991)). The court applies this "substantial basis" test by determining whether the record raises a substantial question about the factual basis of appellant's guilty plea or the law underpinning the plea. *Id.* See Article 45, UCMJ; Rule for Courts-Martial 910(e).

*United States v. Bedania*, 12 M.J. 373, 376 (C.M.A. 1982) sets out the test for challenging a guilty plea because of an unforeseen consequence. Not only must the collateral consequence be major, but it must also be shown that "appellant's misunderstanding of the consequences (a) results foreseeably and almost inexorably from the language of a pretrial agreement; (b) is induced by the trial judge's comments during the providence inquiry; or (c) is made readily apparent to the judge, who nonetheless fails to correct that misunderstanding." *Id.* In the case at hand, we do not need to determine the significance of the collateral consequence because none of the parts of the *Bedania* test has been met. In particular, we find nothing in the record where any misunderstanding of a collateral consequence was made readily apparent to the military judge.

We do note, however, that in the month preceding appellant's trial, the Department of the Army added in its Military Judges' Benchbook a procedural requirement for the military judge to inquire from defense counsel during the providence inquiry whether they have advised an accused "prior to trial of the sex offender reporting and registration requirements resulting from a finding of guilty." Dep't of the Army Pam. 27-9, Legal Services: Military Judges' Benchbook, para. 2-2-8 (1 January 2010) [hereinafter Benchbook]. Although this inquiry of the defense counsel by the military judge is stated as a requirement, we find that this is countered by the objective of the Benchbook, which serves as a publication intended only as a guide with suggestions for military judges. Benchbook, para. 1-1b. As such, we do not find it legal error for a military judge not to conduct this inquiry. We also do not find any separate requirement or responsibility for the military judge to ensure the appellant was aware of this particular collateral consequence. As our superior court has pointed out, "chief reliance must be placed on defense counsel to inform an accused about the collateral consequences." *Bedania*, 12 M.J. at 376. Therefore, we find the military judge did not abuse his discretion in accepting the guilty plea, nor is there a substantial basis to question the guilty plea in this case.

We find that the appellant completed a knowing, voluntary, and intelligent plea of guilty to the charged offense, including a proper inquiry pursuant to *United States v. Care*, 18 U.S.C.M.A. 535, 40 C.M.R. 247 (1969).

### CONCLUSION

On consideration of the entire record and the assigned errors, we find the findings of guilty and the sentence as approved by the convening authority correct in law and fact. Accordingly, the findings of guilty and the sentence are AFFIRMED.



FOR THE COURT:

A handwritten signature in black ink, appearing to read "Malcolm H. Squires, Jr.", is written over the printed name.

MALCOLM H. SQUIRES, JR.  
Clerk of Court