

CORRECTED COPY

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
HAIGHT, PENLAND, and ALMANZA
Appellate Military Judges

UNITED STATES, Appellee
v.
Specialist DONACIANO BOSQUEZ III
United States Army, Appellant

ARMY 20140256

Headquarters, United States Army Fires Center of Excellence and Fort Sill
Thomas Brzozowski, Military Judge
Colonel Mark W. Seitsinger, Staff Judge Advocate

For Appellant: Major Andres Vazquez, Jr., JA; Major Kevin F. Sweeney, JA

For Appellee: Pursuant to A.C.C.A. Rule 15.2, no response filed.

10 September 2015

SUMMARY DISPOSITION

HAIGHT, Senior Judge:

A military judge sitting as a special* court-martial convicted appellant, consistent with his pleas, of two specifications of making a false official statement and two specifications of larceny of military property, in violation of Articles 107 and 121, Uniform Code of Military Justice, 10 U.S.C. §§ 907 and 921 (2012) [hereinafter UCMJ]. The convening authority approved the adjudged sentence of a bad-conduct discharge, confinement for two months, and reduction to the grade of E-1.

This case is before us pursuant to Article 66, UCMJ. Appellant submitted a merits pleading. However, we have identified one issue warranting a brief discussion and relief.

* Corrected

DISCUSSION

Appellant's divorce became final on 13 January 2012. Despite his obligation to alert the U.S. Army to his change in status, he failed to do so, resulting in his wrongful continued receipt of Basic Housing Allowance at the With-Dependents (BAH WITH) rate. For this misconduct, in Specification 1 of Charge II, appellant was charged with, pleaded guilty to, and convicted of stealing money of a value greater than \$500.00 from the U.S. Army *on divers occasions*.

This is one of the very scenarios addressed by our superior court in *United States v. Hines*, 73 M.J. 119 (C.A.A.F. 2014). In that case, the Court of Appeals for the Armed Forces (CAAF) ruled that a failure to apprise finance that one no longer has dependents, despite an obligation to do so, "provided the means by which [the appellant] received money to which he was not entitled on a recurring basis." *Id.* at 124. The court also expressly held, "the 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." *Id.* (quoting *United States v. Billingslea*, 603 F.2d 515, 520 (5th Cir. 1979)). Therefore, consistent with the above precedent, for the conduct charged in Specification 1 of Charge II, we find that appellant committed but a single act of larceny of BAH and will disapprove the "on divers occasions" language from that conviction.

CONCLUSION

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

Specification 1: In that Specialist (E-4) Donaciano Bosquez III, US Army, did, at or near Hunter Army Air Field, GA, between about 13 January 2012 and about 25 February 2013, steal money that was military property, of a value of more than \$500, US currency, the property of the US Army.

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 able to reassess appellant's sentence and are confident the judge would have sentenced appellant to the same sentence absent the error. The approved sentence is AFFIRMED. All rights, privileges, and property of which appellant has been deprived by virtue of that portion of the findings set aside by our decision are ordered restored.

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Judge PENLAND and Judge ALMANZA concur.



FOR THE COURT:

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

MALCOLM H. SQUIRES, JR.
Clerk of Court