

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
MULLIGAN, HERRING, and BURTON
Appellate Military Judges

UNITED STATES, Appellee
v.
Private (E-2) CHRISTOPHER D. GOODSON
United States Army, Appellant

ARMY 20140392

Headquarters, 1st Infantry Division and Fort Riley
Jeffery R. Nance, Military Judge
Colonel Craig E. Merutka, Staff Judge Advocate

For Appellant: Colonel Kevin Boyle, JA; Major Patrick Gordon, JA; Captain Brian D. Andes, JA (on brief).

For Appellee: Colonel Mark H. Sydenham, JA; Major Daniel D. Derner, JA; Captain Samuel E. Landes, JA (on brief).

21 December 2015

SUMMARY DISPOSITION

Per Curiam:

A military judge sitting as a general court-martial convicted appellant, pursuant to his pleas of one specification of willful disobedience of a superior commissioned officer and one specification of obstruction of justice in violation of Articles 90 and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 890, 934 (2012) [hereinafter UCMJ]. Contrary to his pleas, a panel with enlisted representation convicted appellant of a specification of adultery in violation of Article 134, UCMJ, 10 U.S.C. § 934 (2012). In accordance with his pleas, the panel found appellant not guilty of one specification of sexual assault in violation of Article 120, UCMJ, 10 U.S.C. § 920 (2012). The court sentenced appellant to be discharged from the service with a bad-conduct discharge. The convening authority approved the sentence as adjudged.

Appellant's case is before this court for review under Article 66, UCMJ. Appellate defense counsel raises two errors which merit discussion and relief.¹ After review of the entire record, we are not convinced beyond a reasonable doubt as to either clause of the terminal element of appellant's plea to obstruction of justice. Furthermore, we find no evidence of prejudice to good order and discipline in the armed forces in reference to appellant's conviction for adultery. We will provide relief in our decretal paragraph.

I. Adultery

In accordance with Article 66(c), UCMJ, we review issues of legal and factual sufficiency de novo. *United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002). The test for legal sufficiency is "whether, considering the evidence in the light most favorable to the prosecution, a reasonable factfinder could have found all the essential elements beyond a reasonable doubt." *United States v. Turner*, 25 M.J. 324 (C.M.A. 1987); *see also Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *United States v. Humphreys*, 57 M.J. 83, 94 (C.A.A.F. 2002). In resolving questions of legal sufficiency, we are "bound to draw every reasonable inference from the evidence of record in favor of the prosecution." *United States v. Barner*, 56 M.J. 131, 134 (C.A.A.F. 2001). The test for factual sufficiency is "whether, after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, [we] are [ourselves] convinced of the accused's guilt beyond a reasonable doubt." *Turner*, 25 M.J. at 325.

The Specification of Charge II alleged appellant, a married man, wrongfully had sexual intercourse with Ms. JD, a woman not his wife, and that said conduct was to the prejudice of good order and discipline in the armed forces *and* of a nature to bring discredit upon the armed forces. The evidence introduced at trial to support this allegation was the testimony of Ms. JD that she and appellant had sexual intercourse and that she believed that he was planning a "contract marriage." Detective DW, a civilian police officer, testified that he contacted U.S. Army Criminal Investigation Command (CID) to confirm if they could locate or identify "the individual that's on the subscriber information" from a phone number.² The CID agent was able to identify appellant as a soldier in the Army. Detective DW further testified that appellant admitted to engaging in sexual intercourse with Ms. JD.

After the government rested, the defense counsel raised a motion for a finding of not guilty under Rule for Courts-Martial 917 where the "government offered

¹ We have also reviewed those matters personally raised by appellant pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), and they are without merit.

² The civilian police initiated the investigation when Ms. JD alleged that appellant had sexually assaulted her.

absolutely no evidence to indicate the terminal element of prejudice or discredit.” The military judge denied the motion. In his ruling, the military judge addressed some evidence relating to service discrediting. Appellant’s wife testified that they had been married for two years. Appellant testified he had sex with Ms. JD twice, and his wife was eight months pregnant on 29 October 2012. No evidence was presented to show that appellant’s behavior had any impact on the unit.

II. Obstruction of Justice

“During a guilty plea inquiry the military judge is charged with determining whether there is an adequate basis in law and fact to support the plea before accepting it.” *United States v. Inabinette*, 66 M.J. 320, 321-22 (C.A.A.F. 2008) (citing *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991)). We review a military judge’s decision to accept a plea for an abuse of discretion by determining whether the record as a whole shows a substantial basis in law or fact to question the plea. *Inabinette*, 66 M.J. at 322.

Appellant pleaded guilty to the Specification of Additional Charge II, obstruction of justice. The military judge explained the elements of that offense to include “prejudicial to good order and discipline in the armed forces” and “service discrediting conduct.” The military judge found that appellant believed his conduct met the elements of the offense; however, the military judge failed to elicit facts as to why appellant believed his conduct was prejudicial to good order and discipline in the armed forces and service discrediting conduct as charged. There was no stipulation of fact in this case.

III. Conclusion

Having completed our review and in consideration of the entire record, we AFFIRM only so much of the Specification of Charge II as finds:

In that, [Appellant], did, at or near Manhattan, Kansas, on or about 29 October 2012, wrongfully have sexual intercourse with Ms. JD, a woman not his wife, and that said conduct was of a nature to bring discredit upon the armed forces.

The Specification of Additional Charge II and Additional Charge II are set aside, and Additional Charge II is dismissed.

The remaining findings of guilty are AFFIRMED. We are able to reassess the sentence on the basis of the error noted and do so after conducting a thorough analysis of the totality of circumstances presented by appellant’s case and in accordance with the principles articulated by our superior court in *United States v.*

GOODSON—ARMY 20140392

Winckelmann, 73 M.J. 11, 15-16 (C.A.A.F. 2013) and *United States v. Sales*, 22 M.J. 305 (C.M.A. 1986). We are confident that based on the entire record and appellant's course of conduct, the panel would have imposed a sentence of at least that which was adjudged, and accordingly we AFFIRM the sentence.

We find this reassessed sentence is not only purged of any error but is also appropriate. 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.



FOR THE COURT:

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

MALCOLM H. SQUIRES, JR.
Clerk of Court