UNITED STATES NAVY-MARINE CORPS
COURT OF CRIMINAL APPEALS
WASHINGTON, D.C.

Before
M.D. MODZELEWSKI, R.G. KELLY, C.K. JOYCE
Appellate Military Judges

UNITED STATES OF AMERICA

v.

JASON S. SOHM
STAFF SERGEANT (E-6), U.S. MARINE CORPS

NMCCA 201200378
SPECIAL COURT-MARTIAL

Sentence Adjudged: 30 May 2012.
Military Judge: Maj Eric Emerich, USMC.
Convening Authority: Commanding General, U.S. Marine Corps Forces, Special Operations Command, Camp Lejeune, NC.
Staff Judge Advocate's Recommendation: LtCol C.B. Walters, USMC.
For Appellant: LT Gabriel Bradley, JAGC, USN.
For Appellee: LT Ann Dingle, JAGC, USN.

10 January 2013

OPINION OF THE COURT

THIS OPINION DOES NOT SERVE AS BINDING PRECEDENT, BUT MAY BE CITED AS PERSUASIVE AUTHORITY UNDER NMCCA RULE OF PRACTICE AND PROCEDURE 18.2.

PER CURIAM:

A military judge sitting as a special court-martial convicted the appellant, pursuant to his pleas, of false official statement and larceny, in violation of Articles 107 and 121, Uniform Code of Military Justice, 10 U.S.C. §§ 907 and 921. The military judge sentenced the appellant to be confined for 5 months and to be discharged from the United States Marine Corps with a bad-conduct discharge. The convening authority approved

the sentence as adjudged, but suspended all confinement in excess of 4 months as a matter of clemency.[1]

In his sole assigned error, the appellant argues that charging both larceny and false official statement was an unreasonable multiplication of charges, as the false official statement was merely a means by which the appellant committed the larceny. We disagree.

Background

The appellant divorced from his wife in November 2005. Because he failed to notify his command of the divorce, the appellant continued to collect Basic Allowance for Housing (BAH) at the "with dependents" rate until June of 2011. During deployments, the appellant also collected Family Separation Allowance (FSA) payments to which he was not entitled. The BAH overpayments and FSA payments totaled over $21,000.00. Additionally, the appellant filed a travel claim in May 2008 in which he represented falsely that his wife had accompanied him on his permanent change of station (PCS) orders to his new duty station: he was overpaid approximately $890.00 due to that false portion of his claim. At trial, he pled guilty to the false official statement contained within his travel claim and to larceny in the amount of approximately $22,500.00, which amount included the BAH and FSA entitlements that he received, as well as the payment for dependent's travel.

Unreasonable Multiplication of Charges

The doctrine of unreasonable multiplication of charges is a bulwark against "those features of military law that increase the potential for overreaching in the exercise of prosecutorial discretion." *See United States v. Quiroz*, 55 M.J. 334, 337 (C.A.A.F. 2001). To determine whether the Government has unreasonably multiplied charges, this court applies a five-part test: (1) Did the appellant object at trial; (2) Is each specification aimed at distinctly separate criminal acts; (3) Does the number of specifications misrepresent or exaggerate the appellant's criminality; (4) Does the number of specifications unreasonably increase the appellant's punitive exposure; and (5) Is there any evidence of prosecutorial overreaching or abuse in the drafting of the charges? *United States v. Pauling*, 60 M.J. 91, 95 (C.A.A.F. 2004). When conducting a *Quiroz* analysis, we

[1] To the extent that the convening authority's action purported to execute the bad-conduct discharge, it was a nullity. *United States v. Bailey*, 68 M.J. 409 (C.A.A.F. 2009).

are mindful that "[w]hat is substantially one transaction should not be made the basis for an unreasonable multiplication of charges against one person." RULE FOR COURTS-MARTIAL 307(c)(4), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.).

After examining the entire record and considering the factors identified in *Quiroz*, we conclude that the charges in this case were not unreasonably multiplied.

First, we note that the appellant did not raise this issue at trial. While we do not apply a blanket forfeiture rule, the appellant's failure to raise the issue at any point during his trial suggests that he did not view the multiplication of charges as unreasonable at that time and weakens his argument now on appeal. *United States v. Quiroz*, 53 M.J. 600, 607 (N.M.Ct.Crim.App. 2000) (*en banc*).

We find that the second and third factors cut against the appellant as well, because the two specifications are aimed at distinctly separate criminal acts. In Charge II, the appellant was charged with larceny of approximately $22,500.00. He came into possession of the vast bulk of those funds (approximately $21,500.00) because he failed to inform his command of his divorce. That was an ongoing course of theft that lasted for almost four years. In the middle of those four years, the appellant affirmatively filed a travel claim falsely representing that his wife had traveled with him on PCS orders. The court recognizes that the comparatively minor payment of $890.00 that the appellant received for the fraudulent travel claim is included in the aggregate larceny charge of $22,500.00. We nevertheless find that the two specifications are aimed at distinctly separate criminal acts and that the number of specifications neither misrepresents nor exaggerates the appellant's criminality.

Turning to the fourth *Quiroz* factor, the number of specifications did not unreasonably increase the appellant's punitive exposure, as the charges were referred to a special court-martial and each specification carried a maximum punishment in excess of the jurisdictional maximum. Finally, there is no evidence of prosecutorial overreaching or abuse in the drafting of the charges. Indeed, the Government appears to have demonstrated considerable restraint in charging under one specification a number of discrete larcenies of BAH, FSA, and travel funds that occurred over a four year period.

After a careful review of the record of trial, we find there was no "piling on of charges . . . so extreme or unreasonable as to necessitate the invocation of our Article 66(c), UCMJ, . . . power." *Quiroz*, 53 M.J. at 606 (internal quotation marks and citation omitted). Accordingly, we decline to grant any relief based on this assignment of error.

We are convinced that the findings and the sentence are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant was committed. Arts. 59(a) and 66(c), UCMJ. The findings and the sentence are affirmed.

For the Court

R.H. TROIDL
Clerk of Court