

## Ask the Lawyer: Judges' Scrutiny Guards Against Improper Guilty Pleas

By Mathew B. Tully

Q:

What happens if you mistakenly plead guilty to an offense?

A:

It's not uncommon for service members who are accused in court-martial proceedings to be overcome by feelings of shame and fear.

However, the military justice system must scrupulously work to prevent service members from being pressured, by the shame of being accused of a crime and fear of a possible lengthy prison sentence, into wrongly pleading guilty.

Such improvident guilty pleas should not be accepted by military judges. Unfortunately, they sometimes are. Under Rule 910 of the Rules for Court-Martial, judges are required to talk with and question the accused service member to ensure there is "a factual basis for the plea." This stage of a trial is called the providence inquiry.

During this stage, the judge is tasked with ensuring the accused is voluntarily entering the plea of his own free will without being pressured or unduly influenced.

The judge will explain the nature of the offense and its minimum and any maximum penalties.

Then, through a line of questioning, the judge will ask the accused to explain in his own words why he believes he is guilty of the offense and specifically inquire about each and every element of each offense to which he is pleading guilty.

The judge must also make sure the accused is aware of any potential defenses that could be raised or applicable statutes of limitations, according to the Manual for Courts-Martial.

The system isn't perfect, and judges do occasionally err in accepting improvident pleas. In *U.S. v. Redlinski* (2003), Joseph Redlinski, a Coast Guard seaman apprentice, pleaded guilty to, among other things, attempted distribution of a controlled substance (marijuana).

Redlinski confessed to taking \$300 from a sailor to buy marijuana for him, but law enforcement officials stopped him before he could make the purchase. The U.S. Court of Appeals for the Armed Forces set aside the sentence, finding Redlinski's plea to be improvident.

The court noted that during the providence inquiry, the military judge failed to adequately

explain the four elements of an “attempt” under Article 80 of the Uniform Code of Military Justice, and therefore the plea was not “knowing and voluntary.”

Service members who believe they mistakenly pleaded guilty to a crime they did not commit should immediately contact a military law attorney who could prepare an appeal and help them show how their plea was improvident.

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