

IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES,)	AMICUS CURIAE BRIEF OF THE
Appellant)	UNITED STATES NAVY AND MARINE
)	CORPS APPELLATE GOVERNMENT
v.)	DIVISION
)	
Daniel H. CHIN,)	Crim. App. No. 38452
Staff Sergeant (E-5))	
U.S. Air Force)	USCA Dkt. No. 15-0749/AF
Appellee)	

TO THE JUDGES OF THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES:

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CERTIFIED ISSUE PRESENTED

WHETHER THE AIR FORCE COURT OF CRIMINAL APPEALS (AFCCA) ABUSED ITS DISCRETION AND COMMITTED LEGAL ERROR BY FINDING THAT UNREASONABLE MULTIPLICATION OF CHARGES WAS NOT WAIVED, IN DIRECT CONTRADICTION OF THIS COURT'S BINDING PRECEDENT IN *UNITED STATES V. GLADUE*, 67 M.J. 311 (C.A.A.F. 2009).

STATEMENT OF STATUTORY JURISDICTION

Appellant's Statement of Statutory Jurisdiction is accepted.

STATEMENT OF THE CASE

Appellant's Statement of the Case is accepted.

STATEMENT OF THE FACTS

Appellant's Statement of the Facts is accepted.

ARGUMENT

Pursuant to Rule 26 of this Court's Rules of Practice and Procedure, the United States Navy and Marine Corps Appellate Government Division agrees with and supports the position taken by the Air Force Appellate Government Division on behalf of Appellant in their brief on the certified issue. However, Amicus write separately to emphasize that by pleading guilty unconditionally Appellee waived all nonjurisdictional defects including unreasonable multiplication of charges.

"An unconditional plea of guilty waives all nonjurisdictional defects at earlier stages of the proceedings." *United States v. Lee*, 73 M.J. 166, 167 (C.A.A.F. 2014) (quoting

United States v. Bradley, 68 M.J. 279, 281 (C.A.A.F. 2010)).

Except for pleas that are expressly conditional and accepted by the military judge as such, all guilty pleas are implicitly unconditional. *Bradley*, 68 M.J. at 282; R.C.M. 910(a)(2).

The Air Force Court of Criminal Appeals erred by failing to find waiver when an unconditional guilty plea waives all nonjurisdictional defects. *United States v. Chin*, 2015 CCA LEXIS 241 (A.F. Ct. Crim. App. June 12, 2015). See *Lee*, 73 M.J. 166, *Bradley*, 68 M.J. 279. Unreasonable multiplication of charges is a nonjurisdictional defect, and is therefore waived under *Lee*.

United States v. Campbell, 68 M.J. 217 (C.A.A.F. 2009) is instructive. The *Campbell* court found that the appellant's unconditional guilty plea waived his ability to assert multiplicity on appeal. 68 M.J. at 220. The Court noted that instead of entering guilty pleas, the appellant could have challenged the theory of the specifications at trial. *Id.* at 219. Similarly here, Appellee chose not to challenge the specifications at trial and, instead, pled guilty unconditionally. (J.A. 48, 185-87.)

Although multiplicity and unreasonable multiplication of charges are separate and distinct concepts, *United States v. Paxton*, 64 M.J. 484, 490 (C.A.A.F. 2007), there is no reason why different waiver rules should apply. If one can waive

multiplicity which is a constitutional doctrine, one can surely waive unreasonable multiplication of charges which is "designed to address prosecutorial overreaching." *United States v. Roderick*, 62 M.J. 425, 433 (C.A.A.F. 2006) (citing *United States v. Quiroz*, 55 M.J. 334, 337 (C.A.A.F. 2001)).

Therefore, Appellee waived the ability to claim an unreasonable multiplication of charges. Where an accused makes the knowing, voluntary choice to forgo a trial in return for significant concessions from the United States, the United States should be secure in the knowledge that its convictions will not be dismissed by the Court on issues relating to unreasonable multiplication of charges.

CONCLUSION

Amicus respectfully requests that this Court reverse the decision of the lower court.



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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, and to the Appellate Government and Defense Divisions on September 21, 2015.



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