

UNITED STATES v Private (E-1) STEPHEN R. ROWLAND,
556-70-4281, US Army; Private (E-1) ROY A. PULLEY, 555-80-2635, US Army;
Private (E-1) ALAN L. RUPERT, 585-28-8594, US Army; Private (E-1) DANNY R.
SEALS, 562-64-9895, US Army; Private (E-1) RICHARD B. STEVENS, 545-78-3744,
US Army; all of Special Processing Detachment; Private (E-1) RICHARD N. DUNCAN,
TSN 56829186, US Army; Private (E-1) MICHAEL J. MARINO, 567-60-2175, US
Army; Private (E-1) FRANCIS E. SCHIRO, 262-86-7567, US Army; Private (E-1)
BUDDY J. SHAW, TSN 18920140, US Army; Private (E-1) ERNEST C. TREFETHEN,
062-40-3599, US Army; Private (E-1) DANNY L. WILKINS, 561-74-3765, US Army;
Private (E-1) PATRICK A. WRIGHT, 551-74-7286, US Army; all of Correctional
Holding Detachment; and Private (E-2) RICHARD L. GENTILE, 144-38-4174, US
Army, Headquarters Company, Sixth US Army Special Troops, all of Presidio of San
Francisco, California 94129

: CM 421750

* Petition for review by USCMA denied, 42 CMR 356.

United States Army Court of Military Review

42 C.M.R. 668; 1970 CMR LEXIS 743

June 30, 1970

PRIOR HISTORY: [1]** General Court-Martial Convened by Headquarters Sixth United States Army, Presidio of San Francisco, California 94129 (J. A. Hagan, Military Judge).

Sentences adjudged 7 June 1969. Approved sentences: ROWLAND & SHAW: Dishonorable discharge, forfeiture of fifty dollars a month for fifteen months, confinement at hard labor for fifteen months and reduction to the lowest enlisted grade; RUPERT; SCHIRO; TREFETHEN & WRIGHT: Dishonorable discharge, forfeiture of all pay and allowances, confinement at hard labor for one year, and reduction to the lowest enlisted grade; DUNCAN: Dishonorable discharge, forfeiture of all pay and allowances, confinement at hard labor for twelve months, and reduction to the lowest enlisted grade; MARINO & PULLEY: Dishonorable discharge, forfeiture of all pay and allowances, confinement at hard labor for fifteen months, and reduction to the lowest enlisted grade; STEVENS: Dishonorable discharge, forfeiture of fifty dollars a month for twelve months, confinement at hard labor for twelve months, and reduction to the lowest enlisted grade; WILKINS: Dishonorable discharge, forfeiture of fifty dollars a month for nine months, confinement at hard labor for nine months, [**2] and reduction to the lowest enlisted grade; SEALS & GENTILE: Bad conduct discharge, forfeiture of all pay and allowances, confinement at hard labor for six months, and reduction to the lowest enlisted grade.

CORE TERMS: sentence, hard labor, confinement, forfeiture, bad conduct discharge, military authority, override, mutiny, concerted, allowances, lawful, usurp, insubordination, evince, disobedience, requisite, military, lesser, willful, invoke,

companion cases, lawful command, defy authority, commissioned officer, factually, amply

COUNSEL: Appearances: Appellate Counsel for the Accused: CPT Paul C. Saunders, JAGC, CPT Monte Engler, JAGC, COL Daniel T. Ghent, JAGC. Appellate Counsel for the United States: CPT Merle F. Wilberding, JAGC, CPT James S. Mathews, JAGC, CPT Benjamin G. Porter, JAGC, COL David T. Bryant, JAGC.

JUDGES: HAGOPIAN, Judge; Senior Judge PORCELLA and Judge BAILEY concur

OPINION BY: HAGOPIAN

OPINION

[*669] OPINION OF THE COURT

HAGOPIAN, Judge:

The appellants were tried in common and stand convicted by general court-martial for the offense of mutiny, ¹ in violation of Article 94, Uniform Code of Military Justice, 10 USC § 894. The offense was allegedly done in conjunction with 14 other persons at the Presidio Stockade, Presidio of San Francisco, California on 14 October 1968. ² At trial each appellant pleaded not guilty and their cases are before this Court on automatic appellate review. Article 66, Code, supra, 10 USC § 866.

FOOTNOTES

¹ The appellant Seals, however, was acquitted of mutiny and found guilty of the lesser included offense of willful disobedience in violation of Article 90, Uniform Code of Military Justice, 10 USC § 890.

² The instant cases are the last of the alleged mutiny cases tried at the Presidio of San Francisco.

[3]** The Congress has conferred factfinding power in this Court which we invoke today on the factual question of each appellants' guilt of the alleged offense of mutiny. Article 66, Code, supra, 10 USC § 866.

In the cases at bar, Government counsel seeks to factually distinguish the instant cases from those of *United States v Sood*, 42 CMR -- (ACMR 16 June 1970) and its companion cases which were disposed of by this Court on the basis of our factual holding in *Sood*, supra.

Government urges that the facts here, unlike those in *Sood*, supra and its companion

cases, amply demonstrate concerted insubordination on the part of these appellants. They reason that the factual proof of concerted insubordination in these cases is equated to the factual existence of a concerted intent to override lawful military authority. This record indeed factually evinces concerted insubordination on the part of these appellants, but Government's argument misses the mark. Their contention was put to rest in our decision in *United States v Sood*, supra. Here, as in *Sood*, supra:

"The record evinces a collective intent to defy authority by refusing to obey Captain Lamont's order. As mentioned earlier a collective **[**4]** intent to defy authority, as here, falls far short of a collective intent to usurp or override military authority. *The former is not shorthand for the latter.*" *United States v Sood*, supra. (Emphasis added.)

The factual basis of this Court's decision in *United States v Sood*, supra, is dispositive of the case of each appellant **[*670]** at bar. What was said there is apropos here:

"Mindful that a concerted intent to override lawful military authority is a requisite element which must be proved, the facts of this record shout its absence. The words and deeds of the appellant[s] . . . do not evince, either singularly or collectively, an intention to usurp or override military authority." *Sood*, supra.

In the exercise of our appellate responsibility and power "recognizing that the trial court saw and heard the witnesses" we are not convinced beyond a reasonable doubt that the appellants entertained in concert the requisite intent to usurp or override lawful military authority. 10 USC § 866. Rather, the common thread of evidence throughout this entire voluminous record demonstrates an intention on the part of these appellants to implore and invoke the very military authority **[**5]** which they are charged with seeking to override.

We hold today that the evidence in this record, consisting of eighteen volumes, is insufficient as a matter of fact to support a conviction of mutiny. Thus, reversal is required. The evidence of record, however, is amply sufficient to support the lesser included offense of willful disobedience of the lawful command of a superior commissioned officer.

Accordingly, only so much of the findings of guilty of the Charge and specification as finds that each appellant, at the time and place alleged, having received a lawful command from Captain Robert S. Lamont, his superior commissioned officer, did, willfully disobey his order, in violation of Article 90, Code, supra, are affirmed.

The sentence as to each appellant on the basis of the entire record is reassessed.

The Court affirms:

As to appellants Rowland and Shaw, a sentence of bad conduct discharge, confinement at hard labor for eight months, and forfeiture of \$50.00 per month for eight months.

As to appellants Pulley and Marino, a sentence of bad conduct discharge, confinement at hard labor for eight months and forfeiture of all pay and allowances.

As to appellants Trefethen, **[**6]** Wright, Schiro and Rupert, a sentence of bad

conduct discharge, confinement at hard labor for seven months, and forfeiture of all pay and allowances.

As to appellant Gentile, a sentence of confinement at hard labor for six months, and forfeiture of \$50.00 per month for six months.

As to appellant Seals, a sentence of bad conduct discharge, confinement at hard labor for six months and forfeiture of all pay and allowances.

As to appellant Stevens, a sentence of bad conduct discharge, confinement at hard labor for seven months, and forfeiture of \$50.00 per month for seven months.

As to appellant Duncan, a sentence of bad conduct discharge, confinement at hard labor for seven months, and forfeiture of all pay and allowances.

As to appellant Wilkins, a sentence of bad conduct discharge, confinement at hard labor for six months, and forfeiture of \$50.00 per month for six months.

Senior Judge PORCELLA and Judge BAILEY concur.