**UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

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**UNITED STATES**

**v.**

**Airman First Class ANTONIO C. COYL**
**United States Air Force**

**ACM S30677**

**28 February 2006**

Sentence adjudged 22 July 2004 by SPCM convened at Ellsworth Air Force Base, South Dakota. Military Judge: Lance B. Sigmon (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 10 months, and reduction to E-1.

Appellate Counsel for Appellant: Lieutenant Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Major Sandra K. Whittington, Major Andrew S. Williams, and Captain Anthony D. Ortiz.

Appellate Counsel for the United States: Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major Nurit Anderson.

Before

STONE, SMITH, and MATHEWS
Appellate Military Judges

PER CURIAM:

We have reviewed the record of trial, the appellant's assignment of errors, and the government's reply thereto. The appellant claims his guilty plea to indecent acts with a child was improvident because the specification reads that he acted with intent to arouse his own sexual desires, as well as that of his victim.[1] We find his plea provident, but modify the findings to more closely conform to the appellant's admissions at trial and reassess the sentence.

During his *Care* inquiry,[2] the appellant denied several times that he acted with intent to arouse his own sexual desires, although he admitted to intending to arouse those

[1] All of errors raised by the appellant were submitted pursuant to *United States v. Grostefon,* 12 M.J. 431 (C.M.A. 1982).
[2] *United States v. Care,* 40 C.M.R. 247 (C.M.A. 1969).

of his victim. These statements were inconsistent with the specification as drafted, but they were nonetheless sufficient to establish his guilt. To sustain a conviction for the offense of indecent acts with a child, in violation of Article 134, UCMJ, 10 U.S.C. § 934, the evidence must show that the appellant intended to arouse, appeal to, or gratify his own lust, passions, or sexual desires, *or* those of his victim. It is not necessary that he intend to arouse them both. *Manual for Courts-Martial, United States*, Part IV, ¶ 87b(2)(e) (2005 ed.).[3] Considering the record in its entirety, we find no inconsistency requiring rejection of the appellant's plea of guilty. *See* Article 45(a), UCMJ, 10 U.S.C. § 845(a). *See also United States v. Jordan*, 57 M.J. 236, 238-39 (C.A.A.F. 2002); *United States v. Eberle*, 44 M.J. 374, 375 (C.A.A.F. 1996); *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991). To the extent the record lacks a factual basis for that portion of the specification asserting the appellant acted with the intent to arouse his own sexual desires, we cure the error by excepting the words "Airman First Class Antonio C. Coyl and" from the Specification of Charge II. We affirm the remaining language. *See* Article 66(c), UCMJ, 10 U.S.C. 866(c).

Reassessing the sentence, we conclude that our modification of the findings did not affect the facts before the appellant's court-martial nor impact the maximum punishment he could have received. We are confident the excepted language had no impact on the appellant's sentence, and, reassessing, find that the military judge would have imposed the same sentence even absent the error. *See United States v. Doss*, 57 M.J. 182, 185 (C.A.A.F. 2002) (citing *United States v. Sales*, 22 M.J. 305, 307 (C.M.A. 1986)); *United States v. Peoples*, 29 M.J. 426, 428 (C.M.A. 1990). Moreover, we find that the sentence, as reassessed, is appropriate for this offender and his crimes. *See United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982); *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988). We resolve the remaining assignment of error adversely to the appellant. *See United States v. Miller*, 31 M.J. 247, 251 (C.M.A. 1990).

The findings, as modified, and sentence, as reassessed, are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. Article 66(c), UCMJ; *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the findings, as modified, and sentence, as reassessed, are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court

[3] The 2002 edition of the *Manual* was in effect during the processing of the appellant's case. This provision is unchanged in the 2005 edition.