UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman SHANE R. DOOLEY
United States Air Force

ACM S31356

20 August 2008

Sentence adjudged 30 May 2007 by SPCM convened at Barksdale Air Force Base, Louisiana. Military Judge: William M. Burd (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 10 months, forfeiture of $867.00 pay per month for 10 months, reduction to E-1, and a reprimand.

Appellate Counsel for the Appellant: Lieutenant Colonel Mark R. Strickland and Captain Tiffany M. Wagner.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Donna S. Rueppell, and Captain Ryan N. Hoback.

Before

BRAND, FRANCIS, and JACKSON
Appellate Military Judges

PER CURIAM:

In accordance with the appellant's pleas, a military judge sitting as a special court-martial convicted the appellant of one specification of carnal knowledge on divers occasions with a child who had attained the age of 12 but was under the age of 16, one specification of sodomy on divers occasions with a child who had attained the age of 12 but was under the age of 16, and one specification of wrongful possession of visual depictions of a minor engaged in sexually explicit conduct, in violation of Articles 120, 125, and 134, UCMJ, 10 U.S.C. §§ 920, 925, 934. The adjudged and approved sentence consists of a bad-conduct discharge, ten months confinement, forfeitures of $867 pay per

month for ten months, a reduction to E-1, and a reprimand.[1] On appeal, the appellant asserts that his sentence is inappropriately severe.[2] We disagree and affirm the findings and sentence.

Background

In July 2006, the appellant, then 20 years of age, began a platonic relationship with SMH, a 15-year-old family friend. In the beginning of August 2006, the relationship turned sexual, and over the course of several months, the appellant and SMH engaged in sexual intercourse, oral sex, and sent nude photographs of themselves to each other. On 1 December 2007, SMH's father was performing maintenance on her computer and discovered the appellant's nude photographs.

SMH's father reported the appellant to the 2nd Security Forces Squadron (SFS) who promptly summoned the appellant for an interview. After a proper rights advisement, the appellant waived his rights, agreed to answer questions, and consented to a search of his computer. A search of the appellant's computer revealed several photographs of SMH engaged in sexually explicit conduct. On 20 February 2007, the 2nd SFS re-interviewed the appellant and, after a proper rights advisement and waiver, the appellant confessed. On appeal, the appellant--citing his acceptance of responsibility, his guilty plea, his relative youth, and the lack of force used in committing the offenses--asserts that his sentence is inappropriately severe.

Discussion

Article 66(c), UCMJ, 10 U.S.C. § 866(c) provides that this Court "may affirm . . . the sentence or such part or amount of the sentence, as it finds correct in law and fact and determines, on the basis of the entire record, should be approved." Our superior court has concluded that the Courts of Criminal Appeals have the power to, "in the interests of justice, substantially lessen the rigor of a legal sentence." *United States v. Lanford*, 20 C.M.R. 87, 94 (C.M.A. 1955), *quoted in United States v. Tardif*, 57 M.J. 219, 223 (C.A.A.F. 2002).

Engaging in sexual relations with a child and possessing child pornography are some of the most serious offenses in society. Such is the case even under circumstances where the age span between the perpetrator and the victim is but a few years. The fact that the appellant convinced SMH to engage in sexual relations and child pornography increases the seriousness of his actions. After carefully examining the submissions of counsel, the appellant's military record, and taking into account all the facts and

[1] The appellant and the convening authority signed a pretrial agreement wherein the appellant agreed to plead guilty to the charges in return for the convening authority's promise to refer the charges to a special court-martial.
[2] The appellant raised this issue pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

circumstances surrounding the offenses of which the appellant was found guilty, we do not find the appellant's sentence inappropriately severe.

Conclusion

The approved findings and sentence 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 approved findings and the sentence are

AFFIRMED.

OFFICIAL

STEVEN LUCAS, YA-02, DAF
Clerk of the Court