UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman TODD G. ELLIS
United States Air Force

ACM 37048

20 October 2008

Sentence adjudged 02 May 2007 by GCM convened at Holloman Air Force Base, New Mexico. Military Judge: Grant L. Kratz (sitting alone).

Approved sentence: Bad-conduct discharge, forfeiture of all pay and allowances, confinement for 12 months, and reduction to E-1.

Appellate Counsel for the Appellant: Lieutenant Colonel Mark R. Strickland, Major Shannon A. Bennett, and Captain Phillip T. Korman.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Lieutenant Colonel Matthew S. Ward, 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 general court-martial convicted the appellant of one specification of communicating indecent language to a child under 16 years of age and one specification of transferring obscene material to a child in violation of 18 U.S.C. §1470, both in violation of Article 134, UCMJ, 10 U.S.C. § 934.[1] The military judge sentenced the appellant to a bad-conduct discharge, 14

[1] The appellant pled not guilty to another specification of communicating indecent language to a child; the convening authority, pursuant to a pretrial agreement, withdrew this specification once the military judge accepted the appellant's pleas on the other specifications.

months confinement, total forfeitures of all pay and allowances, and a reduction to the grade of E-1.

The convening authority approved the findings, the bad-conduct discharge, 12 months confinement, forfeiture of all pay and allowances, and the reduction to the grade of E-1.[2] On appeal the appellant, pursuant to *United States v. Grostefon,* 12 M.J. 431 (C.M.A. 1982), asserts that his sentence to a bad-conduct discharge and 12 months confinement is inappropriately severe. We disagree and, finding no error, we affirm.

Background

In November 2005, the appellant, then a 26 year-old senior airman assigned to Holloman Air Force Base, New Mexico, met HD through an on-line computer game. HD was a 15 year-old military dependent residing with her family in Guam. HD informed the appellant that she was 15 years old and the appellant informed her that they should not date because HD was under 18 years of age. Between on or about 24 November 2005 and on or about 11 February 2006, the appellant sent HD an instant, electronic message via the Internet wherein he graphically told her how he wanted to engage in oral and sexual intercourse with her.

During the same time period, the appellant also sent HD an electronic image of his penis. On 11 February 2006, HD's mother discovered the e-mails and, in an effort to catch the appellant, posed as HD and asked the appellant to call her. The appellant "took the bait," called, was confronted by HD's mother, and was told never to contact HD again. The next day, HD's mother reported the appellant to military authorities on Guam, which led to the investigation by the Air Force Office of Special Investigations (AFOSI).

Discussion

Article 66(c), UCMJ, 10 U.S.C. § 866(c), "requires that [we] independently determine, in every case within [our] limited Article 66, UCMJ, jurisdiction, the sentence appropriateness of each case [we] affirm." *United States v. Baier*, 60 M.J. 382, 384-85 (C.A.A.F. 2005). 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. Tardif*, 57 M.J. 219, 223 (C.A.A.F. 2002) (quoting *United States v. Lanford*, 20 C.M.R. 87, 94 (C.M.A. 1955)). However, our duty in this regard is "highly discretionary" and does not authorize us to engage in an exercise of clemency. *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999); *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988).

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[2] The appellant and the convening authority signed a pretrial agreement wherein the appellant agreed to plead guilty to the charge in return for the convening authority's promise to not approve a dishonorable discharge and to not approve confinement in excess of 12 months.

When considering sentence appropriateness, we should give "individualized consideration of the particular accused on the basis of the nature and seriousness of the offense and the character of the offender." *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982) (quoting *United States v. Mamaluy*, 27 C.M.R. 176, 180-81 (C.M.A. 1959)) (internal quotations omitted). Sexual relations with a child, whether characterized as indecent language or the transmission of obscene material, is one of the most serious, reprehensible offenses in society. The facts are clear that the appellant exploited his access to the on-line gaming world in an attempt to knowingly develop a sexual relationship with a child. After carefully examining the submissions of counsel, the appellant's military record, one replete with numerous acts of misconduct, and taking into account all the facts and 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 sentence are

AFFIRMED.

OFFICIAL

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