UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Captain VINCENT L. FILIPKOWSKI
United States Air Force

ACM 34056

29 March 2002

Sentence adjudged 27 September 1999 by GCM convened at Peterson Air Force Base, Colorado. Military Judge: Amy M. Bechtold.

Approved sentence: Dismissal, confinement for 2 years, and total forfeiture of pay and allowances.

Appellate Counsel for Appellant: Lieutenant Colonel Beverly B. Knott, Lieutenant Colonel Timothy W. Murphy, and Captain Karen L. Hecker.

Appellate Counsel for the United States: Colonel Anthony P. Dattilo, Lieutenant Colonel Lance B. Sigmon, and Major Jennifer R. Rider.

Before

YOUNG, BRESLIN, and HATTRUP*
Appellate Military Judges

OPINION OF THE COURT

BRESLIN, Senior Judge:

The appellant was convicted, contrary to his pleas, of disobeying the lawful order of his superior commissioned officer, negligent dereliction of duty, and using a facility of interstate commerce to attempt to persuade, induce, entice, or coerce a person under 18 years of age to engage in sexual activity in violation of 18 U.S.C. § 2422(b). Articles 90, 92, and 134, UCMJ, 10 U.S.C. §§ 890, 892, 934. The sentence adjudged and approved was a dismissal, confinement for 2 years, and forfeiture of all pay and allowances.

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* Judge Hattrup participated in this decision before her departure from the Court on 28 February 2002.

The appellant contends that the conviction must be set aside because of unlawful command influence, and that the evidence is legally and factually insufficient to support a conviction under 18 U.S.C. § 2422(b). Through the avenue afforded by *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), the appellant contends that the failure to obtain permission to proceed to trial from offices issuing security clearances is a jurisdictional defect, that the evidence is legally and factually insufficient to support the convictions for disobeying an order and dereliction of duty, and that the sentence was inappropriately severe. Finding no error, we affirm.

Background

The appellant worked on highly-classified projects involving satellites and communications at Peterson Air Force Base, Colorado. He was a major-select, with almost 12 years' service at trial time.

In October 1997, his unit commander gave him a written letter of admonishment for using his government computer to maintain statistics for his fantasy football league. The letter of admonishment instructed the appellant to remove any unofficial documents from his government computer, and to use the Internet only for official business. In 1998, during a performance feedback session, another supervisor told him to stop using his government computer for fantasy football. Later that year, a third supervisor told him directly not to use his government computer during duty time to engage in fantasy football and other similar activities not related to his official duties.

In December 1998, the detachment commander ordered a review of the appellant's computer. The analysis revealed that the appellant had opened fantasy football spreadsheets during duty hours 258 times after receiving the letter of admonishment, and that the programs remained opened for up to 4 hours a day. The dates and times he opened the spreadsheets corresponded to times he opened sports statistics sites on the Internet.

At that same time, the appellant was on leave in Jacksonville, Florida, for Christmas. On 23 December 1999, the appellant went on the Internet, using the screen name "SteelerCS." He used the services of America On-Line, and his transmissions were routed through Virginia. The appellant entered a chat room entitled "JAXFL M4M." The abbreviation "M4M" means "men for men," indicating a chat room catering to homosexuals. The appellant began communicating through instant messages with a person using the screen name "OUTDRBOYFL," who indicated he was 15 years old. Using instant messages, they had a lengthy discussion, which was full of sexual references and innuendo. They agreed to meet that day at a local mall.

In fact, OUTDRBOYFL was a team of police officers working on Central Florida's Child Exploitation Task Force. The police officers intended to arrest the

appellant at the mall, but difficulties in printing out the transmissions prevented them from doing so. The police surveilled the appellant as he waited at the mall and later drove away.

The Florida police sent another message to "SteelerCS" explaining that the OUTDRBOYFL was unable to go to the mall. The appellant and OUTDRBOYFL had another discussion through instant messages. It included very explicit sexual matters. The appellant again agreed to meet OUTDRBOYFL at a local store. The Florida police were waiting, and arrested the appellant when he arrived at the meeting place.

The appellant was properly advised of his rights, and agreed to make a statement. He told the police he only intended to counsel the boy, because he seemed confused about his sexuality. He added that "he wasn't even horny," because he had met an 18-year-old male on line the night before, and had oral sex with him. The appellant told the police that he was a homosexual.

After a day in civilian confinement, Florida authorities released the appellant, and he returned to Colorado. Air Force authorities seized his government computer, and suspended his security clearances. He was denied access to the office computer systems, and was assigned duties outside his normal work area, because co-workers often brought classified work to their desks. The command did not publicize the details of the case at the outset, but the obvious change in circumstances generated rumors and discussion.

The appellant began working on his defense. He obtained numerous letters from co-workers attesting to his good character and duty performance. A few individuals complained that the appellant was pressuring them to provide letters. He asked a lieutenant to help him obtain copies of an earlier e-mail, and she allowed him to use her computer to send a request for the data. Later, she realized that she violated the order denying the appellant access to the office computer systems, and informed her superiors. The command notified the appellant to stay out of the work area, not to access the computer systems, and to contact the command to request data or information for his defense.

In April 1999, trial counsel began interviewing members of the detachment. These interviews sparked gossip and speculation within the unit. The detachment commander, Colonel (Col) Bogenrief, preferred charges against the appellant on 3 May 1999. In anticipation of a formal pretrial investigation, the appellant began collecting character statements from detachment members. This generated more rumors and speculation. On 7 May 1999, at the end of a routine commander's call, Col Bogenrief, read a summary of the charges against the appellant, and reminded unit personnel that the appellant was not to have access to the unit's computer systems.

While court-martial charges were pending, Col Bogenrief made a comment at a staff meeting attended by 10 to 15 people that the appellant was a "dick sucking weasel." Apparently, Col Bogenrief used the expression from time to time in referring to others. It was intended to describe people who were opportunistic and self-serving, rather than anything relating to sodomy. Some detachment members heard rumors of this comment.

Still later, in a private conversation with several detachment leaders, it was mentioned that the appellant was taking leave to return to Florida to get his car, which had been seized by the Florida authorities. Col Bogenrief advised the appellant's supervisor to "keep an eye" on the appellant, because "he might run his car into a bridge abutment." He then smiled and added a comment to the effect that it might save them all some bother. Rumors of this comment also spread to some members of the detachment.

The appellant learned of the detachment commander's comments shortly before trial. The appellant's counsel advised the prosecutors that they intended to raise an issue concerning unlawful command influence. The prosecutors investigated the matter. In an excess of caution, the government arranged for a meeting with the unit members. Col Bogenrief informed them that the appellant was "innocent until proven guilty," that they were free to assist the defense if they chose, and that there would be no reprisal against anyone who assisted the defense.

Unlawful Command Influence

At a preliminary session of the court-martial, the appellant moved to dismiss the charges because of unlawful command influence. The appellant alleged that the commander created an atmosphere of fear and intimidation within the organization so powerful that witnesses refused to testify to his good character, denying him a defense. The military judge heard evidence and entered extensive findings. The military judge found actual and apparent unlawful command influence. She denied the motion to dismiss, but ordered remedial measures to assure the appellant's ability to present a defense. The appellant now renews his assertion of unlawful command influence before this Court. We find no basis for relief.

Article 37, UCMJ, 10 U.S.C. § 837, provides, "No person subject to this chapter may attempt to coerce or, by any unauthorized means, influence the action of a court-martial . . . in reaching the findings or sentence in any case." Improper conduct by a commander is known as unlawful command influence. *United States v. Stombaugh*, 40 M.J. 208, 213 (1994); *United States v. Thomas*, 22 M.J. 388, 393 (C.M.A. 1986). The burden of production is on the party alleging unlawful command influence. *Stombaugh*, 40 M.J. at 213. While the threshold for raising unlawful command influence at trial is low, it must be more than mere allegation or speculation. *United States v. Biagase*, 50 M.J. 143, 150 (1999); *Stombaugh*, 40 M.J. at 213; *United States v. Johnston*, 39 M.J. 242, 244 (C.M.A. 1994).

> [T]here must be something more than an appearance of evil to justify action by an appellate court in a particular case. "Proof of [command influence] in the air, so to speak, will not do." We will not presume that a military judge has been influenced simply by the proximity of events which give the appearance of command influence in the absence of a connection to the result of a particular trial. *United States v. Thomas*, 22 M.J. 388, 396 (C.M.A. 1986), *cert. denied*, 479 U.S. 1085 [ ] (1987); *see also United States v. Levite*, 25 M.J. 334, 341 (C.M.A. 1987) (Cox, J., concurring).

United States v. Allen, 33 M.J. 209, 212 (C.M.A.1991).

Once the issue of command influence is raised, the government must prove beyond a reasonable doubt: (1) that the predicate facts do not exist; or (2) that the facts do not constitute unlawful command influence; or (3) that the unlawful command influence will not prejudice the proceedings or did not affect the findings and sentence. *Biagase*, 50 M.J. at 151.

The military judge heard extensive testimony on the motion. The defense counsel presented the testimony of ten witnesses, including six members of the detachment and the appellant; the prosecution called two witnesses. At the conclusion of the evidence, the military judge entered lengthy findings of fact and conclusions of law.

On issues of command influence, appellate courts review the military judge's findings of fact under a clearly-erroneous standard, but review de novo "the question of command influence flowing from those facts." *United States v. Argo*, 46 M.J. 454, 457 (1997) (quoting *United States v. Wallace*, 39 M.J. 284, 286 (C.M.A. 1994)). It is necessary to review the evidence and findings regarding these allegations.

Lieutenant Colonel (Lt Col) Samuel Walker indicated that he feared that if he testified on behalf of the appellant, it might affect his ability to get promoted. On cross-examination, Lt Col Walker admitted that he came forward because he was "trying to just protect my six so that I can finish my career."[1] Lt Col Walker explained that Col Bogenrief had an aggressive management style that he found intimidating, but that he had no knowledge of any retaliatory actions taken by the commander. Lt Col Walker also stated that he didn't know the appellant and had no opinion about his character. The military judge made findings of fact relating to Lt Col Walker.

> Applying the law to the facts in this case, I find that Lieutenant Colonel Walker fears that Colonel Bogenrief would engage in reprisal action against those who testify in support of the accused. This opinion appears to be

[1] "Six" or "Six o'clock" is term used to refer to the rear of an aircraft.

> based solely on the commander's brusque and sometimes dictatorial manner. . . . Although there is no evidence that Colonel Bogenrief has intentionally attempted to improperly influence Lieutenant Colonel Walker, it is apparent that his management style has created a very real belief on the part of Lieutenant Colonel Walker that Colonel Bogenrief would engage in unlawful command influence. This constitutes apparent unlawful command influence.

Reviewing the factual findings of the military judge under the "clearly-erroneous" standard, we find them to be amply supported by the record. Lt Col Walker found the commander's authoritarian style intimidating; his exaggerated fear of the commander caused him to speculate about what the commander might do.

Reviewing the military judge's conclusion that this was "apparent unlawful command influence" under the de novo standard, we find the military judge erred. Proof of apparent unlawful command influence must be more than "mere speculation." *United States v. Baldwin*, 54 M.J. 308, 311 (2001); *Biagase*, 50 M.J. at 150; *Johnston*, 39 M.J. at 244. The proof must be such that a reasonable person who was aware of all the facts would conclude that the system was unfair. *United States v. Rosser*, 6 M.J. 267, 271 (C.M.A. 1979). *See also United States v. Allen*, 31 M.J. 572, 590 (N.M.C.M.R. 1990); *United States v. Cruz*, 20 M.J. 873, 890 (A.C.M.R. 1985), *rev'd in part on other grounds*, 25 M.J. 326 (C.M.A. 1987).

In this case, the fact that Col Bogenrief's management style was authoritarian, even if true, would not cause a reasonable person to believe that he would engage in unlawful command influence. *See Allen,* 33 M.J. at 212*; Levite*, 25 M.J. at 341 ([A]n appellant's unsubstantiated assertion that unlawful command influence exists is not going anywhere. . . .); *Green v. Widdecke*, 42 C.M.R. 178, 181 (C.M.A. 1970) ("[G]eneralized, unsupported claims of 'command control' will not suffice to create a justiciable issue.") Lt Col Walker's exaggerated and unsubstantiated fear of reprisal, no matter how sincerely held, is insufficient to justify remedial action.

The military judge also heard the testimony of two witnesses who claimed that they feared reprisal for assisting the defense: Captain (Capt) Julie Plummer and Lt Col Anne Kearney. The military judge found that the fear expressed by Capt Plummer and Lt Col Kearney was based solely upon their perception of the commander's authoritarian management style, and their speculation that he would treat unfairly anyone that opposed him. Both were nonetheless willing to testify against the commander, but did not really know the appellant. The military judge found no unlawful command influence concerning Lt Col Kearney. The military judge found that Capt Plummer's belief was genuine, and concluded that constituted apparent unlawful command influence. For the reasons discussed above, we find this was error. We find no basis in law for finding apparent unlawful command influence based upon Capt Plummer's speculations.

The military judge also considered allegations that Senior Master Sergeant (SMSgt) Parks refused to support the appellant because of fear of reprisal by the commander. SMSgt Parks was not called as a witness, although he was apparently available. The military judge allowed all the allegations to be presented through hearsay statements from witnesses, primarily Capt Boldt, a defense attorney assisting the trial defense team. The evidence reveals that (then) Master Sergeant (MSgt) Parks received a letter of reprimand from his superior officer for an inappropriate comment. Upon receiving the reprimand, MSgt Parks wadded up the paper and threw it away. MSgt Parks thought the reprimand was unfair, and worried that it would affect his next annual performance report, and his upcoming chance at promotion. The appellant approached MSgt Parks and requested a statement attesting to the appellant's character. MSgt Parks did not feel he knew the appellant well enough to provide such a statement. MSgt Parks was also worried initially that supporting the appellant would anger the command and adversely affect his opportunity for promotion. While the case progressed, MSgt Parks received a performance report unaffected by the reprimand and was subsequently promoted. Later, SMSgt Parks attended the unit assemblies in which personnel were advised that there would be no repercussions against anyone who assisted the appellant's defense. In the days before trial, he changed his mind and had "no opinion" about whether assisting the defense would adversely affect his career. However, according to the appellant, in a private telephone conversation just before trial, SMSgt Parks indicated that he did not want to support the appellant because he feared it would affect a future assignment. The prosecution did not call SMSgt Parks as a witness.

Ruling on the motion, the military judge found:

> With respect to Senior Master Sergeant Parks, the information presented indicates a fear of reprisal is the reason that he does not want to provide support. The defense has therefore presented information which, if true, constitutes unlawful command influence. The government has failed to meet its burden by clear and convincing evidence that unlawful command influence does not exist with respect to Senior Master Sergeant Parks.

Rather than making more detailed findings of fact, the military judge provided a single factual conclusion; i.e. that SMSgt Park's fear of reprisal was the reason he did not want to assist the defense. This finding does not comport with the weight of the evidence. Nonetheless, we must find that the military judge's finding of fact regarding SMSgt Parks was not "clearly-erroneous" because there was some evidence (the appellant's self-serving statement) that could support the finding.

Reviewing the military judge's conclusions of law de novo, we find error. We note the military judge applied the wrong standard, asserting that the government failed to disprove the allegations by "clear and convincing evidence" rather than "beyond a

reasonable doubt." *See Biagase*, 50 M.J. at 151. We find no prejudice to the appellant from this, however. If the government did not disprove the allegation by clear and convincing evidence, then it would not have satisfied the more stringent "beyond a reasonable doubt" standard.

The more significant error in the military judge's conclusion of law is her determination that the facts provided a basis for a finding of unlawful command influence. SMSgt Parks' fear is a fact, but the fact of his fear does not raise an issue of unlawful command influence under the circumstances. A reasonable person who knew all the facts surrounding SMSgt Park's administrative discipline and subsequent promotion would not conclude that the command would engage in unlawful reprisal if SMSgt Parks testified for the appellant. No matter how sincerely SMSgt Parks believed it, it is nothing more than unfounded speculation.

The military judge also found that the commander's actions in announcing the charges and placing limitations upon the appellant's personal access to information from within the unit's information systems were not improper. We agree. The restrictions on access were reasonable in light of the heightened security interests involved. There is no evidence the appellant was denied any information relevant or necessary to his defense.

We are also convinced beyond a reasonable doubt that actual or apparent unlawful command influence, if any, did not prejudice the proceedings or affect the findings or sentence. *Id.* Because of her findings regarding SMSgt Parks and "the totality of the circumstances," the military judge ordered remedial measures. She ruled that she would grant any motion to compel the production of any witness from the unit, and ordered the command staff excluded from the courtroom and its environs. She also directed trial counsel to offer a point of contact for all defense witness in the event they feel they are the victims of reprisal. Subsequently, the defense (joined by the prosecution) asked the military judge to order another unit meeting, so that trial counsel could inform all unit members of their right to cooperate. The military judge ordered the additional remedy, and it was carried out the next day.

The case proceeded to trial on the merits. The defense did not ask the military judge to compel the production of any witness, and did not present a "good character" defense in findings. During the sentencing portion of the case, the defense presented 25 character statements, including letters from Lt Col Rattray, a member of the unit, and Capt Plummer. Under the circumstances, any possibility of prejudice was eliminated. *See United States v. Rivers*, 49 M.J. 434, 443 (1998).

Legal and Factual Sufficiency of the Evidence—18 U.S.C. § 2422(b)

The appellant maintains that the evidence is legally and factually insufficient to support his conviction for violating 18 U.S.C. § 2422(b) by using the Internet to attempt

to persuade, induce, or entice a person under 18 years of age to engage in unlawful sexual activity. We do not agree.

Under Article 66(c), UCMJ, 10 U.S.C. § 866(c), we will approve only those findings of guilt we determine to be correct in both law and fact. The test for legal sufficiency is whether, when the evidence is viewed in the light most favorable to the government, any rational fact finder could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). The test for factual sufficiency is whether, after weighing the evidence and making allowances for not having observed the witnesses, we ourselves are convinced of the appellant's guilt beyond a reasonable doubt. *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). This is the test we employ in this case. *But see United States v. Nazario*, 56 M.J. 572 (A.F. Ct. Crim. App. 2001); *United States v. Washington*, 54 M.J. 936, 941 (A.F. Ct. Crim. App. 2001) (indicating Congress intended this Court to employ a preponderance of the evidence test in determining the factual sufficiency of the evidence).

On appeal, as he did at trial, the appellant argues that he did not have the specific intent to commit the charged offense when he engaged in the conversations over the computer. The thrust of the appellant's argument is that the electronic conversation on the Internet was simply a fantasy—an "Internet play game"—and that he had no intention of ever meeting the other person or engaging in sexual relations. He argues that the "culture of skepticism" in this fantasy world is such that he did not really believe that the person communicating with him was a 15 year-old boy. The argument is significantly undercut by the fact that the appellant actually traveled—twice—in an attempt to meet the other person.

The appellant also offers an alternative argument, claiming that he did intend to meet the other correspondent for the purpose of "just going shopping," or to serve as a mentor for an obviously troubled young man. Of course, this second argument contradicts the first regarding whether he wanted to meet and who he expected to meet. Moreover, the explicit nature of the sexual discussion indicates the purpose of the proposed meeting was to be a sexual, not merely social, encounter.

The appellant's argument that the law enforcement agents entrapped him is unpersuasive. The detectives provided the appellant an opportunity to commit the offense, but the idea of the crime did not originate with the government. *See* Rule for Courts-Martial (R.C.M.) 916(g). The law enforcement officers were skillful in pressing the appellant to declare what he wanted without first suggesting what that should be. In any event, it is clear the appellant was predisposed to use the Internet to set up meetings with other males for sexual relations. He admitted to the arresting officers that just the night before he had engaged in oral sodomy with a male he met over the Internet. While that would not have violated 18 U.S.C. § 2422(b) absent proof that the individual was

under 18 years old, it is still an offense under the UCMJ. Article 125, UCMJ, 10 U.S.C. § 925.

Jurisdiction and "Permission to Proceed"

Citing *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), the appellant maintains that, before prosecuting him, the Air Force failed to obtain permission from all necessary agencies as required by Air Force Instruction (AFI) 31-501, *USAF Personnel Security Program*, ¶ 8.9 (2 May 1994). He argues that, as a result, the court-martial lacked jurisdiction over his case. We do not agree.

The appellant had access to highly classified programs. When these offenses came to light, his access was removed. Under AFI 31-501, a commander contemplating disciplinary action that could result in the removal of the subject from the service must request permission to proceed from the agencies that grant the security clearances. Paragraph 8.9.8 provided, in pertinent part, "Under no circumstances may the charges be referred to trial until the appropriate action office grants authority to proceed." The appellant concedes that the government obtained permission from his unit, the Air Force Operational Test and Evaluation Center, to proceed to trial, but argues that it failed to properly obtain permission from other affected agencies.

It is unnecessary for this Court to determine whether permission to proceed was properly obtained in this case. The Constitution of the United States gives Congress the authority to regulate the land and naval forces. U.S. Const. art. I, § 8, cl. 14. Congress established the jurisdiction of courts-martial through the UCMJ. The appellant does not suggest that he does not meet the jurisdictional requirements of the UCMJ.

The appellant alleges a violation of an Air Force regulation. However, military courts are not justified in attaching jurisdictional significance to service regulations in the absence of their express characterization as such by Congress. *United States v. Kohut*, 44 M.J. 245, 249 (1996); *United States v. Jette*, 25 M.J. 16, 18 (C.M.A. 1987). The violation of a regulation may be asserted by an accused only if it was prescribed to protect an accused's rights. *United States v. Sloan*, 35 M.J. 4, 9 (C.M.A. 1992).

In this case, the regulation in question is a policy statement designed to protect the interests of the Air Force in classified information, rather than to provide personal rights to one who holds a security clearance. Even assuming arguendo that there was a violation, it would not deprive the court-martial of jurisdiction.

Factual and Legal Sufficiency—Disobey Order/Dereliction of Duty

The appellant was convicted of negligent dereliction of duty between 15 June 1998 and 30 October 1998 for using his government computer for other than official

purposes. He was also found guilty of disobeying a lawful order not to use his computer to play fantasy football on divers occasions between 2 November 1998 and 5 December 1998. Citing *Grostefon*, the appellant argues the evidence was legally and factually insufficient to support the convictions. We disagree.

At the time of the offenses, regulations required government personnel to use government equipment for official purposes only. Commanders were authorized to allow some limited personal use of computers, provided it did not adversely impact duty performance and was in the best interests of the Air Force. The appellant notes that others in the organization used their government computers for personal purposes. He argues, as he did at trial, that he was mistaken about whether his use of the government computer to access and use fantasy football statistics was permissible. However, the evidence reveals that superior officers specifically told the appellant—three times—not to use his government computer to engage in fantasy football activities. Under the circumstances, his claim of ignorance is unpersuasive. The evidence is legally sufficient to support the conviction, and we are also convinced beyond a reasonable doubt of the appellant's guilt.

Sentence Appropriateness

The appellant argues that his sentence is inappropriately severe, in light of his years of service, his record of performance, and the nature of the offenses. We do not agree.

Article 66(c), UCMJ, 10 U.S.C. § 866(c), requires this Court to approve only that sentence, or such part or amount of the sentence, as it finds correct in law and fact and determines should be approved. The determination of sentence appropriateness "involves the judicial function of assuring that justice is done and that the accused gets the punishment he deserves." *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988). In order to determine the appropriateness of the sentence, this Court must consider the particular appellant, the nature and seriousness of the offense, the appellant's record of service and all matters contained in the record of trial. *United States v. Snelling*, 14 M.J. 267 (C.M.A. 1982); *United States v. Alis*, 47 M.J. 817, 828 (A.F. Ct. Crim. App. 1998).

We find the sentence appropriate for the offenses and the offender. The appellant committed a serious crime by attempting to entice what he believed to be a 15-year-old boy into a sexual encounter. The offense reflects great discredit not only upon the appellant but the entire Air Force. We realize that the wrongful use of a government computer is, by itself, a relatively minor transgression. However, the offenses were aggravated in this case because the appellant repeatedly failed to follow, or intentionally disobeyed, instructions from superior officers telling him not to use his computer for these purposes.

The approved findings 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. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

FELECIA M. BUTLER, TSgt, USAF
Chief Court Administrator