UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Captain STEVEN W. FORD, JR.
United States Air Force

ACM 37934

11 December 2012

Sentence adjudged 29 December 2010 by GCM convened at Malmstrom Air Force Base, Montana. Military Judge: Martin T. Mitchell (sitting alone).

Approved sentence: Dismissal and confinement for 6 years.

Appellate Counsel for the Appellant: Captain Ja Rai A. Williams.

Appellate Counsel for the United States: Colonel Don M. Christensen; Lieutenant Colonel Linell A. Letendre; Captain Brian C. Mason; and Gerald R. Bruce, Esquire.

Before

STONE, GREGORY, and HARNEY
Appellate Military Judges

OPINION OF THE COURT

GREGORY, Senior Judge:

A general court-martial composed of military judge alone convicted the appellant in accordance with his pleas of (1) aggravated sexual assault of a child, aggravated sexual abuse of a child, and indecent liberties with a child, in violation of Article 120, UCMJ, 10 U.S.C. § 920; (2) sodomy with a child, in violation of Article 125, UCMJ, 10 U.S.C. § 925; (3) enticement of a minor to engage in sexual activity, indecent language with a child, and adultery, in violation of Article 134, UCMJ, 10 U.S.C. § 934; and (4) conduct unbecoming an officer, in violation of Article 133, UCMJ, 10 U.S.C. § 933. The court adjudged a sentence of a dismissal and confinement for six years. The convening

authority approved the sentence as adjudged. The appellant assigns as error that the specifications of adultery and indecent language fail to state offenses because each omits the required terminal element for Article 134, UCMJ, offenses. Additionally, pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), he argues that (1) the military judge erred by refusing to take judicial notice of certain federal sentencing statutes and (2) the trial counsel improperly argued for a sentence in excess of the pretrial agreement cap.

The appellant, an officer married to another officer, used Internet chat to entice the 14-year-old stepdaughter of a noncommissioned officer to engage in sex acts with him. After sneaking into the basement of the noncommissioned officer's on-base home, the appellant engaged in oral, anal, and vaginal intercourse with the victim while her family slept upstairs. He returned to the home several more times to engage in sex acts with the victim as well as take nude photographs of her. During a subsequent investigation, law enforcement agents monitored phone calls and chat sessions between the appellant and the victim, during which he used sexually explicit, indecent language and transmitted photographs of his genitals. He also attempted to entice an undercover agent posing as an underage girl to engage in sex acts with him.

Concerning the appellant's argument that two of the Article 134, UCMJ, specifications fail to state offenses, whether a charge and specification state an offense is a question of law that we review de novo. *United States v. Crafter*, 64 M.J. 209, 211 (C.A.A.F. 2006) (citations omitted). "A specification states an offense if it alleges, either expressly or by [necessary] implication, every element of the offense, so as to give the accused notice and protection against double jeopardy." *Id*. (citing *United States v. Dear*, 40 M.J. 196, 197 (C.M.A. 1994)); *see also* Rule for Courts-Martial 307(c)(3). While failure to allege the terminal element of an Article 134, UCMJ, offense is error, in the context of a guilty plea, the error is not prejudicial where the military judge correctly advises the appellant of all the elements and the plea inquiry shows that the appellant understood to what offense and under what legal theory he was pleading guilty. *United States v. Ballan*, 71 M.J. 28, 34-36 (C.A.A.F.), *cert. denied*, 133 S. Ct. 43 (2012) (mem.).

Such is the case here. During the guilty plea inquiry into the specifications at issue, the military judge explained the elements of the offense to include the terminal element. The appellant acknowledged understanding the elements and explained how his conduct met the terminal elements. Under these circumstances, the appellant suffered no prejudice from the omission of the terminal element in the specifications at issue. *See Ballan*. We have considered the remaining assignments of error and find them to be without merit. *See United States v. Matias*, 25 M.J. 356, 361 (C.M.A. 1987).

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, 10 U.S.C. § 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

LAQUITTA J. SMITH
Paralegal Specialist

[*] We note that the overall delay of over 18 months between the time the case was docketed at the Air Force Court of Criminal Appeals and completion of review by this Court is facially unreasonable. Because the delay is facially unreasonable, we examine the four factors set forth in *Barker v. Wingo*, 407 U.S. 514, 530 (1972): (1) the length of the delay, (2) the reasons for the delay, (3) the appellant's assertion of the right to timely review and appeal, and (4) prejudice. *See United States v. Moreno*, 63 M.J. 129, 135-36 (C.A.A.F. 2006). When we assume error but are able to directly conclude that any error was harmless beyond a reasonable doubt, we do not need to engage in a separate analysis of each factor. *See United States v. Allison*, 63 M.J. 365, 370 (C.A.A.F. 2006). This approach is appropriate in the appellant's case. The post-trial record contains no evidence that the delay has had any negative impact on the appellant. Having considered the totality of the circumstances and the entire record, we conclude that any denial of the appellant's right to speedy post-trial review and appeal was harmless beyond a reasonable doubt.