UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman ROBERT E. GORMAN
United States Air Force

ACM 37194

21 October 2008

Sentence adjudged 28 January 2008 by GCM convened at Spangdahlem Air Base, Germany. Military Judge: Gordon R. Hammock (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 27 months, and reduction to E-1.

Appellate Counsel for the Appellant: Major Shannon A. Bennett.

Appellate Counsel for the United States: Colonel Gerald R. Bruce and Lieutenant Colonel Matthew S. Ward.

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 wrongfully possessing child pornography on divers occasions, in violation of Article 134, UCMJ, 10 U.S.C. § 934. The military judge sentenced the appellant to a dishonorable discharge, three years confinement, and a reduction to the grade of E-1. The convening authority approved the findings, the dishonorable discharge, 27 months confinement, and the reduction to the grade of E-1.[1] On appeal the appellant, pursuant to *United States v. Grostefon,* 12 M.J. 431 (C.M.A. 1982), asserts that his sentence to a dishonorable discharge is

[1] 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 confinement in excess of 28 months.

inappropriately severe. The appellant's assertion is without merit. Finding no error, we affirm.

Background

On several occasions between 1 July 2006 and 31 January 2007, the appellant used Frostwire, a peer-to-peer software program, to download five videos,[2] 19 still images of children[3] engaged in sexually explicit conduct, and 121 suspected images of child pornography. The appellant reviewed the videos and images on several occasions over a seven-month period of time and then deleted them. In late 2006, Investigator LC of the Alabama Office of Prosecutive Services was conducting a proactive search for child pornography on the Internet and came across the appellant's Internet Protocol (IP) address as an IP address where two known images of child pornography were downloaded.

On 1 December 2006, Investigator LC informed the Air Force Office of Special Investigations (AFOSI) of his findings. On 31 January 2007, the AFOSI summoned the appellant to their office for an interview, and, after a proper rights advisement, the appellant waived his rights and confessed to downloading child pornography. After the interview, the appellant consented to a search of his residence. The AFOSI agents seized the appellant's personal laptop computer and a forensic examination of the appellant's laptop computer revealed five videos, 19 still images of children engaged in sexually explicit conduct, and 121 suspected images of child pornography.

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).

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

[2] Three of the videos were entitled: "hot spermed little girls mix," "GOOD! 2yo girl getting raped during diaper change," and "8 Best little girl in a pink dress."

[3] The children depicted in the videos and still images were approximately three to eight years of age.

(C.M.A. 1982) (quoting *United States v. Mamaluy*, 27 C.M.R. 176, 180-81 (C.M.A. 1959)) (internal quotations omitted). Possession of child pornography is one of the most serious offenses in society. While there are undoubtedly varying degrees of child pornography, all pernicious in itself, the youth of the victims in this case increases the seriousness of the appellant's actions. After carefully examining the submissions of counsel, the appellant's military record, and taking into account all the facts and circumstances surrounding the offense of which the appellant was found guilty, we do not find the appellant's sentence inappropriately severe.

Conclusion

The approved findings and the 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