

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Technical Sergeant DANIEL W. HONZIK
United States Air Force**

ACM 34667 (f rev)

12 October 2004

Sentence adjudged 20 June 2001 by GCM convened at Schriever Air Force Base, Colorado. Military Judge: Patrick M. Rosenow (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 7 years, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, Major Jeffrey A. Vires, Major Patricia A. McHugh, Major Karen L. Hecker, and Captain L. Martin Powell.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Lance B. Sigmon, and Captain C. Taylor Smith.

Before

PRATT, ORR, and MOODY
Appellate Military Judges

**OPINION OF THE COURT
UPON FURTHER REVIEW**

PER CURIAM:

This case is before this Court for the second time. In *United States v. Honzik*, ACM 34667 (A.F. Ct. Crim. App. 26 Nov 2003) (unpub. op.), this Court found an error not originally raised by the appellant, set aside the finding of guilty of Specification 4 of Charge I, and reassessed the sentence, approving only a dishonorable discharge, confinement for 6 years, forfeiture of all pay and allowances, and reduction to E-1. At the Court of Appeals for the Armed Forces, our superior court set aside the finding of guilty of Specification 1 of Charge I, and remanded the case to us with

direction to either dismiss Specification 1 of Charge I and reassess the sentence based on the affirmed guilty findings, or order a rehearing. *See United States v. Honzik*, No. 04-0188/AF (20 Sep 2004). We have decided to dismiss Specification 1 of Charge I and reassess the sentence. The criterion for sentence assessment is that “if the court can determine to its satisfaction that, absent any error, the sentence adjudged would have been of at least a certain severity, then a sentence of that severity or less will be free of the prejudicial effects of error.” *United States v. Sales*, 22 M.J. 305, 308 (C.M.A. 1986).

We find that the gravaman of the case sub judice was the appellant’s attempt to entice a minor to engage in sexual activity. Unaware that his intended victim was an adult participating in an undercover operation, he discussed the proposed sexual activity at length with her over the Internet and made detailed plans to travel interstate to carry out his plan. Additionally, he attempted to communicate indecent language to other minor victims by means of the Internet. In so doing, he evidenced an intent to cause direct harm to specific individuals. By comparison, the harm caused by the appellant himself to the subjects of the pornographic pictures at issue in Specification 1 of Charge I was more remote. Looking at the entire record, and taking into account those matters properly before the sentencing authority, we are satisfied that, without the Specification dismissed above, the military judge would have adjudged a sentence no less than a dishonorable discharge, confinement for 66 months, forfeiture of all pay and allowances, and reduction to E-1. In addition, we find this reassessed sentence appropriate for the offenses involved. Article 66(c), UCMJ, 10 U.S.C. § 866(c).

The sentence, as reassessed, is

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court