UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman CHRISTOPHER M. KEY
United States Air Force

ACM S31341

31 July 2008

Sentence adjudged 29 May 2007 by SPCM convened at Sheppard Air Force Base, Texas. Military Judge: Bryan Watson (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 12 months, and reduction to E-1.

Appellate Counsel for the Appellant: Lieutenant Colonel Mark R. Strickland and Captain Phillip T. Korman.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major 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 special court-martial convicted him of one specification of wrongfully possessing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. § 934. His adjudged and approved sentence consists of a bad-conduct discharge, confinement for 12 months, and reduction to the grade of E-1.[1] The appellant, pursuant to *United States v. Grostefon,* 12 M.J. 431 (C.M.A. 1982), asserts that his sentence is inappropriately severe. We disagree and, finding no error, we affirm.

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[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 refer the charge to a special court-martial.

Background

On 14 October 2006, the appellant allowed two fellow airmen to borrow his laptop computer for purposes of downloading music from the Internet. As the airmen were browsing files on the appellant's computer, they discovered files that led them to believe the appellant possessed child pornography.[2] The airmen informed their military training leader who, in turn, interviewed one of the airmen and had that airman complete a statement describing the files he saw on the appellant's computer.

On 24 October 2006, agents from the Air Force Office of Special Investigations (AFOSI) interviewed the appellant. After a proper rights advisement, the appellant waived his rights, confessed to possessing child pornography, and consented to a search of his computer. A forensic examination of the appellant's computer revealed a compilation video involving minor girls, ages 7-13, displaying their genitalia and engaged in sexual acts.[3]

Discussion

The appellant asserts that his sentence to a bad conduct discharge is inappropriately severe. In support he points to: (1) his admission of guilt and cooperation with the AFOSI; (2) the fact that he did not distribute child pornography; (3) his remorse; (4) his acceptance of responsibility, as evidenced by his guilty plea and willingness to enter into a stipulation of fact; (5) his depression; (6) his poor family environment; and (7) great rehabilitative potential.

Article 66(c), UCMJ, 10 U.S.C. § 866(c), provides that this Court "may affirm . . . the sentence or such part or amount of the sentence, as it finds correct in law and fact and determines, on the basis of the entire record, should be approved." 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. Lanford*, 20 C.M.R. 87, 94 (C.M.A. 1955), *quoted in United States v. Tardif*, 57 M.J. 219, 223 (C.A.A.F. 2002).

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)). However we are not authorized to engage in an exercise of clemency. *United States v. Healy*, 26 M.J. 394, 396 (C.M.A. 1988); *see also United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999).

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[2] Two of the files were entitled, "12 and 13 year old cum shot" and "12 year old sex scene" respectively.
[3] The video file was entitled, "Many girls from 12yo to 14yo having sex experiences kiddie pedo boy Lolita . . . . "

The appellant, through his actions, perpetuates a market that wrecks havoc on the lives of the youngest and most vulnerable members of our society. His actions are a clear departure from the norms of society and expected standards of conduct in the military. 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. To the contrary, we find the sentence is appropriate for this offender and his offense. *See United States v. Baier*, 60 M.J. at 382, 383-84 (C.A.A.F. 2005); *Healy*, 26 M.J. at 395.

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