

**UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

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**UNITED STATES**

**v.**

**Staff Sergeant BRIAN A. MALONE**  
**United States Air Force**

**ACM 36666**

**16 February 2007**

Sentence adjudged 23 February 2006 by GCM convened at Elmendorf Air Force Base, Alaska. Military Judge: Barbara G. Brand (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 3 years, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Major Anniece Barber, and Major Chadwick A. Conn.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Lieutenant Colonel Robert V. Combs, and Captain Jamie L. Mendelson.

Before

**BROWN, MATHEWS, and THOMPSON**  
Appellate Military Judges

**PER CURIAM:**

In accordance with his pleas, a general court-martial comprised of a military judge sitting alone found the appellant guilty of 11 specifications of attempting to communicate indecent language to children under the age of 16, seven specifications of sending a visual image of his penis over the internet, two specifications of using a computer to attempt to entice individuals under the age of 18 to engage in sexual activity, and a single specification of possessing visual depictions of a minor engaged in sexually explicit conduct, in violation of Articles 80 and 134, UCMJ, 10 U.S.C. §§ 880, 934. He was found not guilty of specifications alleging attempts to commit sodomy, indecent acts and carnal knowledge, all in violation of Article 80, UCMJ. For purposes of sentencing, the military judge consolidated eight specifications each from Charges I and II, reducing the

maximum impossible term of confinement to 40 years. The military judge sentenced the appellant to a dishonorable discharge, confinement for 3 years, and reduction to the grade of E-1. The convening authority approved the adjudged sentence.

On appeal, the appellant asserts his sentence is inappropriately severe. We disagree and affirm. At the time of trial the appellant was a 29-year old Staff Sergeant with nearly nine years of outstanding service. Among other accomplishments, the appellant received several decorations, numerous awards, and was a distinguished graduate of three Air Force training courses. At trial, he presented several character statements attesting to his efforts towards rehabilitation. In contrast to the positive aspects of the appellant and his career, however, is the serious nature of his offenses. He engaged in sexually explicit written conversations over the internet with people whom he believed to be under 16 years of age, and he possessed explicit child pornography. Furthermore, in both his online profile and in some of his internet conversations, he identified himself as a member of the United States Air Force.

Considering the record as a whole, taking into account both the appellant and his crimes, we find that the sentence is just and appropriate. *See United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988); *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982).

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

LOUIS T. FUSS, TSgt, USAF  
Chief Court Administrator