

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Master Sergeant HENRY L. MCMASTER
United States Air Force**

ACM 35153(f rev)

24 January 2005

Sentence adjudged 15 February 2002 by GCM convened at Kadena Air Base, Japan. Military Judge: Steven B. Thompson (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 20 years, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Colonel Carlos L. McDade, Major Terry L. McElyea, and Captain Jennifer K. Martwick.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Lance B. Sigmon, Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, Major Shannon J. Kennedy, and Captain C. Taylor Smith.

Before

PRATT, ORR, and MOODY
Appellate Military Judges

PER CURIAM:

This case is before our Court for the second time. We previously set aside the action of the convening authority and returned the case for new post-trial processing. *United States v. McMaster*, ACM 35153 (A.F. Ct. Crim. App. 24 Oct 2003) (unpub. op.). On further review, the appellant does not challenge the new action that was completed in this case. Instead, he now alleges that the policy of the United States Disciplinary Barracks (USDB), Fort Leavenworth, Kansas, forbidding a sex offender to have contact with minor children, including his own son, unlawfully modifies and increases the

severity of his sentence. The appellant contends, therefore, that the USDB lacks the authority to enforce such a policy.

We have already addressed this policy in our order denying the appellant's petition for extraordinary relief, finding that the policy does not constitute cruel and unusual punishment, nor does it unconstitutionally infringe upon the appellant's parental rights. We have further examined the policy in light of *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69 (1963), and *Bell v. Wolfish*, 441 U.S. 520, 537-38 (1979), which set forth criteria for evaluating whether governmental action is punitive in nature. As we stated in our earlier order, we conclude that this policy bears a rational relation to the legitimate government interest in prisoner rehabilitation and in the protection of children. Taking into account all the criteria set forth in *Mendoza-Martinez*, we conclude that the policy is not punitive and that the USDB has not abused its discretion by implementing it.

The approved findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant was committed. Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). On the basis of the entire record, the approved findings and sentence are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court