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

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**UNITED STATES**

**v.**

**Technical Sergeant STEVEN R. NOVICKI**
**United States Air Force**

**ACM 36706**

**20 July 2007**

Sentence adjudged 2 March 2006 by GCM convened at Travis Air Force Base, California. Military Judge: James B. Roan (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 24 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Captain Christopher L. Ferretti.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, and Captain Jefferson E. McBride.

Before

SCHOLZ, JACOBSON, and THOMPSON
Appellate Military Judges

PER CURIAM:

The appellant was convicted, in accordance with his pleas, of one specification of possession of child pornography and one specification of receiving child pornography in interstate commerce in violation of Article 134, UCMJ, 10 U.S.C. § 934. The general court-martial, consisting of a military judge sitting alone, sentenced the appellant to a dishonorable discharge, confinement for 36 months, and reduction to the grade of E-1. The convening authority approved a sentence consisting of a bad-conduct discharge, confinement for 24 months, and reduction to E-1.[1] On appeal, the appellant asserts: (1)

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[1] The reduction in confinement was pursuant to a pretrial agreement (PTA). The dishonorable discharge was authorized under the PTA, but reduced by the convening authority to a bad-conduct discharge upon the advice of the convening authority's staff judge advocate.

that his sentence is inappropriately severe;[2] and, (2) that the action of the convening authority is ambiguous and should be amended to reflect the convening authority's true intent. We find the appellant's first assignment to be without merit. As to the second, we find error and take corrective action.

In sworn testimony during the providence inquiry and via a stipulation of fact, the appellant admitted that, over a period of almost two years, he viewed and downloaded a variety of pictures and video files depicting actual children in various stages of undress and/or engaged in sexual acts with adults or other children. His personal computer, when seized by authorities, contained approximately 1500 images and 9 video files of child pornography. The images depicted children ranging in age from 1 to 17 years old. The appellant also admitted engaging in child-sex related chat and file sharing in various chat rooms and even provided a picture of his own daughter to another chat room member. While engaging in these activities on his personal computer from his on-base residence, the appellant used e-mail addresses and screen names such as airforceguy@wapda.com, "airforceguyus@yahoo.com," "usafdaddy," "airforceguyus," and "airforcedaddy92."

In determining the appropriateness of a sentence, this Court exercises its "highly discretionary" powers to assure that justice is done and the appellant receives the punishment he deserves. *United States v. Lacy*, 50 M.J. 286, 287 (C.A.A.F. 1999). Performing this function does not authorize this Court to exercise clemency. *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988). The primary manner in which we discharge this responsibility is to give "individualized consideration" to an appellant "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)). Upon reviewing the record of trial, the error assigned by the appellant, and the government's reply, we hold that the appellant's sentence is not inappropriately severe.

As for the appellant's second assignment of error, we review whether post-trial processing was properly completed under a de novo standard. *United States v. Kho*, 54 M.J. 63 (C.A.A.F. 2000). The appellant points out that the convening authority clearly intended to waive automatic forfeitures, pursuant to Article 58b(b), UCMJ, 10 U.S.C. § 858b(b), in the amount of $1273.50 *per month* for four months for the benefit of appellant's dependents. Unfortunately, the words "per month" were inadvertently omitted from the action. The government agrees with the appellant's interpretation of the convening authority's intent, as do we. We also agree with both the appellant and the government that the convening authority's action must be corrected. We believe, however, that in the interests of judicial economy the correction can and should be ordered at this level, rather than returning the record to the convening authority for a new action. *See generally United States v. Ruppel*, 45 M.J. 578, 588-89 (A.F. Ct. Crim. App.

[2] This issue was raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

1997). After careful review of the action, the addendum to the staff judge advocate's recommendation, the trial defense counsel's waiver request memorandum, and the convening authority's memorandum approving the request, we find no logical interpretation of the convening authority's intent other than four monthly payments of $1273.50 each to the appellant's dependents. We also find no indication in the record that the appellant has been prejudiced by this administrative error. Accordingly, we order the action to be corrected by adding the words "per month" after the figure "$1273.50." *See United States v. Rosado*, ACM 35418 (A.F. Ct. Crim. App. 20 Jul 2004) (unpub. op.).

In light of the corrective action taken above, the 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 findings and sentence are

AFFIRMED.

OFFICIAL

MARTHA E. COBLE-BEACH, TSgt, USAF
Court Administrator