

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman JAMES E. STOOPS
United States Air Force**

ACM 34491 (f rev)

17 December 2004

Sentence adjudged 19 May 2004 by GCM convened at Edwards Air Force Base, California. Military Judge: R. Scott Howard.

Approved sentence: Bad-conduct discharge, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Carlos L. McDade.

Appellate Counsel for the United States: Lieutenant Colonel Gary F. Spencer.

Before

STONE, GENT, and SMITH
Appellate Military Judges

UPON FURTHER REVIEW

PER CURIAM:

On 3 January 2001, this Court affirmed the findings and sentence in the case sub judice. The appellant appealed, and on 21 January 2004, our superior court reversed our decision and set aside the findings of guilt and the sentence. Consequently, the record of trial was returned to the Judge Advocate General for further action consistent with *United States v. O'Connor*, 58 M.J. 450 (C.A.A.F. 2003).

Our superior court authorized a rehearing, which was duly convened on 19 May 2004. At the rehearing, the appellant pled guilty to violating Article 134, UCMJ, 10 U.S.C. § 934 by wrongfully possessing one or more images of child pornography, contrary to 18 U.S.C. § 2252A(a)(5)(A). A panel of officer and enlisted members sentenced him to a bad-conduct discharge, forfeiture of all pay and allowances, and

reduction to the grade of E-1. The record of trial was returned to this Court on 4 October 2004 for our further review. To date, we have not received any additional briefs or motions related to the case. The deadline for the appellant to file a brief having expired, we now consider the case on its merits.

One matter warrants our attention. Because the appellant's sentence did not include confinement, the convening authority was required to reduce the forfeitures to "not more than two-thirds pay per month to run for a specified period of time or up until the punitive discharge is executed." Air Force Instruction 51-201, *Administration of Military Justice*, ¶ 9.8.1 (26 Nov 2003). See also Rule for Courts-Martial 1107(d)(2), Discussion. We will remedy this error by approving only so much of the sentence as extends to a bad-conduct discharge, forfeiture of \$795.00 pay per month to run until the punitive discharge is executed, and reduction to the grade of E-1.

The findings and sentence, as modified, 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, as modified, are

AFFIRMED.

Judge GENT did not participate.

OFFICIAL

ANGELA M. BRICE
Clerk of Court