UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman JAMES E. STOOPS
United States Air Force

ACM 34491 (recon)

8 August 2005

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 Beverly B. Knott, Colonel Carlos L. McDade, Lieutenant Colonel Timothy W. Murphy, Major Jeffrey A. Vires, Major Patrick J. Dolan, Major Sandra K. Whittington, and Major James M. Winner.

Appellate Counsel for the United States: Colonel Anthony P. Dattilo, Lieutenant Colonel Lance B. Sigmon, Lieutenant Colonel Gary F. Spencer, Major John C. Johnson, and Major Steven R. Kaufman.

Before

STONE, SMITH, and MATHEWS
Appellate Military Judges

UPON RECONSIDERATION

PER CURIAM:

We have examined the record of trial, the appellant's three assignments of error, and the government's reply thereto. First, we conclude the military judge did not abuse his discretion by accepting the appellant's plea of guilty to possessing child pornography. *United States v. Prater*, 32 M.J. 433 (C.M.A. 1991). The military judge clearly defined child pornography, including the meaning of "sexually explicit conduct," and the appellant admitted that the images he possessed on his computer met this definition. *See generally United States v. Maxwell*, 45 M.J. 406, 424 (C.A.A.F. 1996). Second, we

conclude the military judge did not abuse his discretion in determining that the photographs offered into evidence during the presentencing proceedings were properly authenticated. *See United States v. Maxwell*, 38 M.J. 148, 150 (C.M.A. 1993). *See also* Rule for Courts-Martial (R.C.M.) 1001(e)(1). Third, we conclude the military judge did not abuse his discretion in admitting a stipulation of expected testimony during the presentencing proceedings. *See* Mil. R. Evid. 803(6); *United States v. Casey*, 45 M.J. 623, 627 (N.M. Ct. Crim. App. 1996). Even if the military judge did err in admitting the stipulation, any error was harmless. *United States v. Kerr*, 51 M.J. 402, 405 (C.A.A.F. 1999).

One additional 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 (AFI) 51-201, *Administration of Military Justice*, ¶ 9.8.1. (2 Nov 1999). *See also* R.C.M, 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 two-thirds 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.

OFFICIAL

ANGELA M. BRICE
Clerk of Court