

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class WILLIAM W. WHEELER JR.
United States Air Force**

ACM S30433

5 May 2005

Sentence adjudged 18 May 2003 by SPCM convened at Thumrait Air Base, Oman. Military Judge: Linda S. Murnane (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 7 months, and reduction to E-1.

Appellate Counsel for Appellant: Major Terry L. McElyea and Major Sandra K. Whittington.

Appellate Counsel for the United States: Colonel LeEllen Coacher and Lieutenant Colonel Robert V. Combs.

Before

MALLOY, JOHNSON, and GRANT
Appellate Military Judges

OPINION OF THE COURT

This opinion is subject to editorial correction before final release.

JOHNSON, Judge:

The appellant was tried by special court-martial convened at Thumrait Air Base, Sultanate of Oman, on 18 May 2003. In accordance with his plea, the military judge found him guilty of failure to obey a lawful general order on divers occasions and larceny on divers occasions, in violation of Articles 92 and 121, UCMJ, 10 U.S.C. §§ 892, 921. He was sentenced to a bad-conduct discharge, confinement for 7 months, and reduction to the grade of E-1. The convening authority approved the sentence as adjudged and waived mandatory forfeitures for the benefit of the appellant's spouse.

The appellant was convicted of failing to obey a lawful general order on divers occasions by wrongfully possessing pornographic and sexually explicit images. He argues on appeal that his conviction for violating this order on divers occasions should not be affirmed because he only violated the order on one occasion. We agree and take corrective action. We find there was only one continuous and exclusive possession of the compact disc containing adult pornography. See *United States v. Dees*, ACM 34841 (A.F. Ct. Crim. App. 13 Dec 2002) (unpub. op.). Accordingly, as to the Specification of Charge II and Charge II, we affirm the findings excepting the words “on divers occasions” from the Specification. The appellant concedes this error did not have a prejudicial impact on the sentence and this Court agrees.

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

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court