UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant CRAIG A. BUKOWSKI

ACM 35743

28 October 2005

Sentence adjudged 14 August 2003 by GCM convened at Dyess Air Force Base, Texas. Military Judge: Gregory E. Pavlik (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 20 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Major Terry L. McElyea, and Major James M. Winner.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major Michelle M. McCluer.

Before

STONE, SMITH, and MATHEWS
Appellate Military Judges

OPINION OF THE COURT

This opinion is subject to editorial correction before final release.

MATHEWS, Judge:

The appellant was convicted, in accordance with his pleas, of one specification of desertion, in violation of Article 85, UCMJ, 10 U.S.C. §885. He was also convicted, contrary to his pleas, of two specifications of wrongful and knowing possession of visual depictions of minors engaged in sexually explicit conduct, in violation of Article 134,

UCMJ, 10 U.S.C. § 934.[1] His approved sentence consists of a bad-conduct discharge, confinement for 20 months, and reduction to E-1. On appeal, the appellant challenges the legal and factual sufficiency of his child pornography convictions and argues that the addendum to the staff judge advocate's recommendation (SJAR) should have been served on him for comment. Finding no error, we affirm.

Factual and Legal Sufficiency of Child Pornography Convictions

The appellant first contends that the record is legally and factually insufficient to support his conviction for possessing child pornography. In resolving legal sufficiency, we consider the evidence at trial, drawing from it every reasonable inference in favor of the prosecution, to determine whether a reasonable factfinder could have found all of the elements beyond a reasonable doubt. *United States v. Blocker*, 32 M.J. 281, 284 (C.M.A. 1991); *United States v. Turner*, 25 M.J. 324 (C.M.A. 1987); *United States v. Bethea*, 46 C.M.R. 223 (C.M.A. 1973). To determine factual sufficiency, we weigh the evidence and, making allowances for the fact that we have not personally observed the witnesses, determine whether we ourselves are convinced of the appellant's guilt beyond a reasonable doubt. *Turner*, 25 M.J. at 325.

Both standards are met here. Law enforcement authorities seized tens of thousands of pornographic images and video files stored on compact disks in the appellant's home, including hundreds of images and videos depicting minors engaged in a wide variety of sex acts. The sheer volume and nature of these materials, coupled with the appellant's written and oral admissions that he sometimes liked "to view things that might otherwise be forbidden if not viewed by an artist," that he found children aged 14-16 to be the most appealing "in an artistic view," and that he personally believed age 16 would be "a good age" for children to pose for pornographic pictures, was sufficient to permit a reasonable factfinder to find all of the elements beyond a reasonable doubt. Moreover, after considering all of the evidence admitted at trial, we are ourselves convinced beyond a reasonable doubt of his guilt.

Service of Addendum to the SJAR

The appellant next contends that the addendum to the SJAR contained "new matters" under Rule for Courts-Martial (R.C.M.) 1106(f)(7) and should have been served on him for comment. We consider this question de novo to determine whether the addendum contains "new decisions on issues in the case, matter from outside the record

[1] The appellant was tried under clause 2 of Article 134, UCMJ, the conduct of a nature to bring discredit upon the armed forces provision of the general article, rather than clause 3, which permits the military to incorporate crimes and offenses not capital – in child pornography prosecutions, typically 18 U.S.C. § 2251 *et. seq.* This approach to child pornography offenses is permissible in courts-martial. *United States v. Mason*, 60 M.J. 15, 20 (C.A.A.F. 2004).

of trial, [or] issues not previously discussed." *United States v. Key*, 57 M.J. 246, 248 (C.A.A.F. 2002) (citing R.C.M. 1106(f)(7), Discussion).

The addendum suggests that the appellant should spend as much time "away from the source of his addiction" – the Internet, which the appellant described in his clemency submission as "true human nature on display" and to which the appellant admitted being addicted. The addendum goes on to assert that he contributed to the victimization of children, a point raised at trial by a prosecution witness and a fair counter to claims in the appellant's clemency submission that he is "a generous person who puts other peoples' needs before his own." Finally, the addendum characterizes the appellant's behavior as "despicable," a characterization fairly and firmly based on the nature of the images themselves. Applying the standard set forth in *Key*, we find that none of the comments cited by the appellant amount to "new matters" requiring service of the addendum. *See Key*, 57 M.J. at 246.

Conclusion

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 approved findings and sentence are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court