

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

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UNITED STATES

v.

Staff Sergeant MICHAEL S. CAHILL  
United States Air Force

ACM 36769

5 October 2007

Sentence adjudged 4 May 2006 by GCM convened at Lackland Air Force Base, Texas. Military Judge: Barbara E. Shestko (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 5 years, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Captain Griffin S. Dunham.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, and Captain Jamie L. Mendelson.

Before

JACOBSON, PETROW, and ZANOTTI  
Appellate Military Judges

OPINION OF THE COURT

This opinion is subject to editorial correction before final release.

PETROW, Judge:

The appellant was convicted, in accordance with his pleas, of one specification of attempting to communicate indecent language to a person he believed to be a child under the age of 16 years, one specification of possessing child pornography, one specification of distributing child pornography, and one specification of distributing a video of himself engaged in sex-related activity to a person he believed to be a minor, in violation of Articles 80 and 134, UCMJ, 10 U.S.C. §§ 880, 934. The appellant was sentenced to a dishonorable discharge, confinement for 6 years, and reduction to E-1. Pursuant to the terms of a pre-trial agreement, the convening authority reduced the term of confinement

to 5 years. On appeal, the appellant asserts that the sentence was excessively harsh.<sup>1</sup> We disagree.

### *Background*

According to facts adduced through a stipulation of fact and the military judge's providence inquiry, on 23 November 2004, an FBI Special Agent acting undercover and using the screen name "tessagirl," logged onto an Internet chat site entitled "[i]tgirlsexchat." The appellant, using the name "shanekill," established a private chat connection with "tessagirl" and they engaged in computer chat for approximately one hour and 39 minutes. During the chat, the FBI Special Agent described "tessagirl" as a 13-year-old female. After this disclosure, the appellant communicated with "tessagirl" using the following language: "would you let me play with you," "is your nipples getting hard," and "can you take off your top." In addition, the appellant forwarded to "tessagirl" 34 picture files and 4 video files. Four of the pictures contained known child pornography and 15 others contain suspected child pornography. The appellant also forwarded to "tessagirl" a video of himself masturbating. The transcript of the chat session indicates that the appellant offered to make telephone contact with "tessagirl."

On 4 April 2005, after obtaining a search warrant for the appellant's off-base residence, FBI and AFOSI agents seized the appellant's computer hard drive and other digital storage media. Examination of the seized items disclosed the presence of 44 images of known child pornography and 255 additional images of suspected child pornography.

### *Discussion*

This Court may affirm only such findings and sentence as we find correct in law and in fact, and determine, on the basis of the entire record, should be approved. Article 66(c), UCMJ, 10 U.S.C. § 866(c). When considering sentence appropriateness, we should give "'individualized consideration' of the particular accused '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)).

In conducting our review we must keep in mind that Article 66(c), UCMJ, has a sentence appropriateness provision that is "a sweeping Congressional mandate to ensure 'a fair and just punishment for every accused.'" *United States v. Baier*, 60 M.J. 382, 384 (C.A.A.F. 2005) (citing *United States v. Bauerbach*, 55 M.J. 501, 504 (A.C.C.A. 2001)). Article 66(c), UCMJ, "requires that [we] independently determine, in every case within

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<sup>1</sup> We will review the appellant's assignment of error that his sentence was "excessively harsh" under a "sentence appropriateness" analysis.

[our] limited Article 66, UCMJ, jurisdiction, the sentence appropriateness of each case [we] affirm.” *Id.* at 384-85. Our duty to assess the appropriateness of a sentence is “highly discretionary,” but does not authorize us to engage in an exercise of clemency. *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999); *see also United States v. Healy*, 26 M.J. 394, (C.M.A. 1988).

Although the actions of the appellant posed no direct harm to any individual, the possession and distribution of child pornography serves to perpetuate an evil which does very real harm to those children used in the production of such materials. Little in nature is so universally evident as is the desire to protect the youngest and most vulnerable members of a society. The appellant’s Internet communications with a person he believed to be a child of 13 years evidenced a severe disregard for the welfare of that “child.” Accordingly, the appellant’s actions were an egregious departure from the most basic standards of conduct we expect from a member of our society and, especially, of our military establishment. Taking into account all the facts and circumstances, we do not find the appellant’s sentence inappropriately severe. *See Snelling*, 14 M.J. at 268-69. To the contrary, after reviewing the entire record, we find the sentence is appropriate for this offender and his offenses. *See Baier*, 60 M.J. at 383-84; *Healy*, 26 M.J. at 395.

#### *Conclusion*

The approved 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; *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL



STEVEN LUCAS, GS-11, DAF  
Clerk of the Court