

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant JAVIER CENDEJAS
United States Air Force

ACM 34864 (f rev)

26 May 2006

Sentence adjudged 13 September 2001 by GCM convened at Grand Forks Air Force Base, North Dakota. Military Judge: Gregory E. Pavlik (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 54 months, forfeitures of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, and Major Jefferson B. Brown.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Lance B. Sigmon, and Major Matthew J. Mulbarger.

Before

STONE, SMITH, and MATHEWS
Appellate Military Judges

UPON FURTHER REVIEW

PER CURIAM:

The Court of Appeals for the Armed Forces returned this case to us after setting aside the appellant's conviction on one specification of possession of child pornography, in violation of Article 134, UCMJ, 10 U.S.C. § 934.* *United States v. Cendejas*, 62 M.J. 334 (C.A.A.F. 2006). Considering the record in its entirety, and in the interest of judicial economy, we dismiss that specification, reassess the sentence, and affirm.

The appellant remains convicted of one specification of violating a lawful general regulation by misusing a government computer, two specifications of communicating indecent language to minors, and two specifications of attempting to communicate

* This specification alleged a violation of 18 U.S.C. § 2252A(a)(5)(B), assimilated under Clause 3 of Article 134, UCMJ.

indecent language to minors, in violation of Articles 80, 92, and 134, UCMJ, 10 U.S.C. §§ 880, 892, 934. Each of these offenses stemmed from the appellant's sexual fixation on underage females. He used his government computer to identify girls as young as 13 living near his duty station, and he engaged them in online correspondence, usually using lewd and graphic language and frequently soliciting them for sex. When writing, the appellant often boasted of his status in the military, identifying himself variously as a member of the armed forces, a member of the Air Force, a noncommissioned officer, and a member of the "central control for the whole base." He even sent a photograph of himself, in uniform, to at least one of his correspondents.

We are satisfied that, on these facts, we can determine "the sentence would have been at least of a certain magnitude" absent the dismissed offense, and we can "cure the error by reassessing the sentence instead of ordering a sentence rehearing." *See United States v. Doss*, 57 M.J. 182, 185 (C.A.A.F. 2002) (citing *United States v. Sales*, 22 M.J. 305, 307 (C.M.A. 1986)). Without the child pornography specification, we conclude the court would have imposed a sentence of at least a dishonorable discharge, confinement for 13 months, forfeiture of all pay and allowances, and reduction to the grade of E-1. *See United States v. Doss*, 57 M.J. 182, 185 (C.A.A.F. 2002); *United States v. Sales*, 22 M.J. 305, 307 (C.M.A. 1986).

We reassess the appellant's sentence to include only a dishonorable discharge, confinement for 13 months, forfeiture of all pay and allowances, and reduction to E-1. After giving this appellant the individualized consideration he is due and carefully reviewing the facts and circumstances of his case, we have determined that the sentence as reassessed is appropriate. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982); *United States v. Mamaluy*, 27 C.M.R. 176, 180-81 (C.M.A. 1959); *United States v. Amador*, 61 M.J. 619, 626 (A.F. Ct. Crim. App. 2005), *pet. denied*, No. 05-0715/AF (9 Mar 2006).

Specification 1 of Charge II is dismissed. The remaining findings and sentence, as reassessed, 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 remaining findings and sentence, as reassessed, are

AFFIRMED.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator