

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Staff Sergeant JAMES A. DOPP
United States Air Force**

ACM 35538

3 June 2005

Sentence adjudged 13 February 2003 by GCM convened at Yokota Air Base, Japan. Military Judge: David F. Brash (sitting alone).

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

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

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Major Thomas L. Cluff, Jr.

Before

STONE, GENT, and SMITH
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignment of error, and the government's answer thereto. The appellant pled guilty to, inter alia, a violation of Clauses 1 and 2 of Article 134, UCMJ, 10 U.S.C. § 934, by wrongfully and knowingly possessing visual depictions of a minor engaging in sexually explicit conduct on divers occasions. On appeal, he claims his plea to this offense was improvident. We disagree and affirm.

For this court to reject a guilty plea on appellate review, the record must show "a substantial basis in law and fact for questioning the plea." *United States v. Irvin*, 60 M.J. 23, 24 (C.A.A.F. 2004) (citing *United States v. Jordan*, 57 M.J. 236, 238 (C.A.A.F. 2002) and *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991)). The military judge correctly instructed the appellant on each of the elements of the offense and properly

defined the appropriate terms, including the definition of “minor.” Neither the military judge nor the appellant made any reference to virtual images or depictions of child pornography that “appear to be” of minors engaging in sexually explicit conduct. *See Irvin*, 60 M.J. at 25-26. The appellant said he thought the children in the images were minors because “[t]hey looked younger than 18.” Under these circumstances, the record reflects no substantial basis in law or fact for questioning the providence of the appellant’s guilty plea. *Id.* at 26; *United States v. Mason*, 60 M.J. 15, 16 (C.A.A.F. 2004). We hold the appellant’s plea was provident.

Accordingly, we conclude 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). On the basis of the entire record, the findings and sentence are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court