

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class NATHAN J. MEISTER
United States Air Force**

ACM 37798

12 April 2012

Sentence adjudged 1 October 2010 by GCM convened at Joint Base Elmendorf-Richardson, Alaska. Military Judge: Vance H. Spath (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 24 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for the Appellant: Major Michael S. Kerr and Major Nicholas W. McCue.

Appellate Counsel for the United States: Colonel Don M. Christensen; Major Joseph Kubler; and Gerald R. Bruce, Esquire.

Before

**ORR, GREGORY, and WEISS
Appellate Military Judges**

This opinion is subject to editorial correction before final release.

PER CURIAM:

A general court-martial composed of military judge alone convicted the appellant in accordance with his pleas of six specifications of using indecent language, one specification of possessing child pornography, one specification of transferring indecent images to a child under the age of 16 years, and one specification of soliciting a child under the age of 16 years to transmit indecent images, in violation of Article 134, UCMJ, 10 U.S.C. § 934. The court sentenced him to a dishonorable discharge, confinement for 32 months, forfeiture of all pay and allowances, and reduction to E-1. A pretrial agreement capped confinement at 34 months. The convening authority approved the sentence adjudged except reduced confinement to 24 months. The appellant argues that

the six indecent language specifications fail to state an offense because they do not expressly allege the terminal element.

The appellant engaged in a series of Internet chat room conversations over several months with a 14-year-old girl, during which he repeatedly used explicit, vulgar sexual language. He transmitted to her photographs of his exposed genitals and asked her to reciprocate. A search of his computer discovered images and videos of child pornography. The appellant did not dispute the legal sufficiency of any specification at trial and entered pleas of guilty. Although the six specifications of using indecent language do not expressly allege the terminal element, the military judge fully advised the appellant of all the elements of each specification to include that the alleged conduct must be to the prejudice of good order and discipline or service discrediting. The appellant acknowledged understanding all the elements and explained how his conduct was service discrediting.

Failure to allege the terminal element of an Article 134, UCMJ, offense is error but, in the context of a guilty plea, the error is not prejudicial where the military judge correctly advises the appellant of all the elements and the providence inquiry shows that the appellant understood to what offense and under what legal theory he was pleading guilty. *United States v. Ballan*, No. 11-0413/NA, slip op. at 14, 18-19 (C.A.A.F. 1 March 2012). As in *Ballan*, the appellant here suffered no prejudice to a substantial right: he knew under what clause he was pleading guilty and clearly understood how his conduct violated the terminal element of Article 134, UCMJ.

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, 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 the sentence are

AFFIRMED.

OFFICIAL



A handwritten signature in blue ink, appearing to read "S. Lucas", is written over a faint horizontal line.

STEVEN LUCAS
Clerk of the Court