

**UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

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**UNITED STATES**

**v.**

**Master Sergeant STEPHEN B. O'LEARY**  
**United States Air Force**

**ACM 35568**

**30 August 2005**

Sentence adjudged 11 February 2003 by GCM convened at Maxwell Air Force Base, Alabama. Military Judge: Sharon A. Shaffer (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 24 months, a fine of \$6000.00, with additional confinement for 6 months if the fine is not paid, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, Major Rachel E. VanLandingham, and Captain Diane M. Paskey.

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

Before

**BROWN, MOODY, and FINCHER**  
Appellate Military Judges

**PER CURIAM:**

A general court-martial composed of a military judge sitting alone convicted the appellant, consistent with his pleas, of dereliction of duty, violating a lawful general regulation, wrongful appropriation, and possessing and receiving child pornography<sup>1</sup> in violation of Articles 92, 121, and 134, UCMJ, 10 U.S.C. §§ 892, 921, 934. Contrary to his pleas, he was also found guilty of larceny in violation of Article 121, UCMJ. Relying on *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002), the appellant asserts that his pleas of guilty to possessing and receiving child pornography were improvident.

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<sup>1</sup> The appellant pleaded guilty to and was found guilty by the military judge of violating clause 1 of Article 134, UCMJ, 10 U.S.C. § 934, conduct prejudicial to good order and discipline in the armed forces by possessing child pornography and receiving child pornography.

In determining whether a guilty plea is provident, the test is whether there is a “substantial basis in law and fact for questioning the guilty plea.” *United States v. Jordan*, 57 M.J. 236, 238 (C.A.A.F. 2002) (citing *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991)). In order to establish an adequate factual basis for a guilty plea, the military judge must elicit “factual circumstances as revealed by the accused himself [that] objectively support that plea[.]” *Id.* at 238 (quoting *United States v. Davenport*, 9 M.J. 364, 367 (C.M.A. 1980)). We review a military judge’s decision to accept a guilty plea for an abuse of discretion. *United States v. Eberle*, 44 M.J. 374, 375 (C.A.A.F. 1996) (citing *United States v. Gallegos*, 41 M.J. 446 (C.A.A.F. 1995)).

The appellant’s testimony during the providency inquiry objectively supports the appellant’s acknowledgement that his possession and receipt of visual depictions of minors engaging in sexually explicit conduct violated clause 1 of Article 134, UCMJ. See *United States v. Irvin*, 60 M.J. 23 (C.A.A.F. 2004). Having examined the photographs, we are convinced, as the appellant was at trial, that his actions violated Article 134, UCMJ. We conclude there is no basis to disturb the appellant’s pleas and hold his pleas were provident.

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 sentence are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE  
Clerk of Court