UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman JEREMY S. RUSSELL
United States Air Force

ACM 37319

03 September 2009

Sentence adjudged 27 August 2008 by GCM convened at Eielson Air Force Base, Alaska. Military Judge: Charles E. Wiedie (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 12 months, and reduction to E-1.

Appellate Counsel for the Appellant: Major Shannon A. Bennett, Major Lance J. Wood, Major Grover H. Baxley, and Captain Phillip T. Korman.

Appellate Counsel for the United States: Colonel Douglas P. Cordova, Major Jeremy S. Weber, and Captain G. Matt Osborn.

Before

BRAND, FRANCIS, and HELGET
Appellate Military Judges

PER CURIAM:

In accordance with his pleas, the appellant was found guilty of one specification of wrongfully and knowingly possessing visual depictions of minors engaging in sexually explicit conduct, in violation of Article 134, UCMJ, 10 U.S.C. § 934. The approved sentence consists of a bad-conduct discharge, confinement for 12 months, and reduction to E-1.[1]

[1] The convening authority deferred the mandatory forfeitures until the date of action and waived the mandatory forfeitures for a period of six months or release from confinement, whichever is sooner.

The appellant asserts, pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), that his sentence, which includes a bad-conduct discharge and confinement for 12 months, is inappropriately severe. We disagree.

Background

Between 18 November 2006 and 1 February 2007, the appellant downloaded numerous images of child pornography on his home computer at his residence on Eielson Air Force Base (AFB), Alaska. The appellant downloaded the child pornography through Limewire, a peer-to-peer (P2P) file sharing network. All of the child pornography downloaded using Limewire was saved to a Limewire folder on his personal computer. When he installed Limewire, the appellant had knowledge that other Limewire users would have access to those files through the download process.

On 18 November 2006, Detective KV, of the Anchorage Police Department's Computer Crimes Unit, conducted a P2P investigation, using the Internet Crimes Against Children Task Force's list of Internet Protocol addresses with known images of child pornography in their shared folders. Detective KV searched the appellant's shared folder on his computer and identified several files that appeared to contain child pornography. Subsequently, on 1 February 2007, the appellant was interviewed by Detective KV and Special Agent BV, of the Air Force Office of Special Investigations, Eielson AFB, wherein he admitted to downloading and possessing child pornography.

Using common search terms for locating child pornography on the Internet, the appellant successfully located, downloaded, and possessed between 10 and 100 images that depicted minors engaging in sexually explicit conduct. He viewed the images daily as visual stimulation for sexual gratification. The images of child pornography that the appellant possessed contained multiple child victims who have been identified by investigators worldwide and have been logged into the National Center for Missing and Exploited Children's (NCMEC) national clearing house database. These victims have been identified as real children who were under the age of 18 when the images were produced.

Inappropriately Severe Sentence

This Court reviews sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005). We "may affirm only such findings of guilty and the sentence or such part or amount of the sentence, as [we find] correct in law and fact and determine[], on the basis of the entire record, should be approved." Article 66(c), UCMJ, 10 U.S.C. § 866(c). "We assess sentence appropriateness by considering the particular appellant, the nature and seriousness of the offenses, the appellant's record of service, and all matters contained in the record of trial." *United States v. Bare*, 63 M.J. 707, 714 (A.F. Ct. Crim. App. 2006) (citing *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A.

1988); *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982)). We have a great deal of discretion in determining whether a particular sentence is appropriate but are not authorized to engage in exercises of clemency. *United States v. Lacy*, 50 M.J. 286, 287-88 (C.A.A.F. 1999); *Healy*, 26 M.J. at 395-96.

The maximum punishment in this case was a dishonorable discharge, confinement for 10 years, forfeiture of all pay and allowances, and reduction to E-1. The appellant's approved sentence was a bad-conduct discharge, confinement for 12 months, and reduction to E-1.

The appellant asserts that his sentence is overly severe in light of his immediate acceptance of responsibility, his good duty performance, and the length of time between his confession on 1 February 2007 and his court-martial on 27 August 2008. However, as the government points out, all of this information was provided to the military judge for his consideration in determining an appropriate sentence.

Having given individualized consideration to this particular appellant, the reprehensible and repugnant nature of the offense, the appellant's record of service, and all other matters in the record of trial,[2] we hold that the approved sentence is not inappropriately severe.

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).

[2] We note that in sentencing, the government called Mr. TC, a former active duty member and a friend of the appellant's. He testified that sometime in September 2006, while at the appellant's residence, the appellant showed him child pornography on his computer. This caused him to stop associating with the appellant.

Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

STEVEN LUCAS, YA-02, DAF
Clerk of the Court