

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Senior Airman DENNIS J. SCHOLZ JR.
United States Air Force**

ACM 35550

30 March 2005

Sentence adjudged 20 February 2003 by GCM convened at Osan Air Base, Republic of Korea. Military Judge: David F. Brash (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 8 months, and reduction to E-1.

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

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Major Shannon J. Kennedy.

Before

PRATT, ORR, and MOODY
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignment of error, and the government's reply thereto. The appellant alleges that his plea of guilty to possession of child pornography is improvident, as being contrary to *Ashcroft v. Free Speech Coalition* 535 U.S. 234 (2002). However, unlike the defendant in that case, this appellant was not charged with violating 18 U.S.C. § 2252A(a)(5)(B), popularly known as the Child Pornography Prevention Act (CPPA). Rather, his misconduct was alleged to have violated clauses 1 and 2 of Article 134, UCMJ, 10 U.S.C. § 934. We conclude, therefore, that the fact that the appellant never stated during the providence inquiry that the victims in the pictures were actual children does not affect the sufficiency of his plea. *See United States v. Mason*, 60 M.J. 15, 19-20 (C.A.A.F. 2004); *United States v. Irvin*, 60 M.J. 23, 25-26 (C.A.A.F. 2004). *See also United States v. Anderson*, 60 M.J. 548 (A.F. Ct. Crim. App. 2004), *pet. denied*, 60 M.J. 403 (C.A.A.F. 2004).

Considering the entire record, and paying special attention to the providence inquiry and the stipulation of fact, we find no “‘substantial basis’ in law and fact for questioning the guilty plea.” *United States v. Milton*, 46 M.J. 317, 318 (C.A.A.F. 1997) (citing *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991)). We hold that the military judge did not abuse his discretion by accepting the guilty plea. See *United States v. Eberle*, 44 M.J. 374 (C.A.A.F. 1996).

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