

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

No. ACM 40821

UNITED STATES

Appellee

v.

Randall R. RAFAJKO

Technical Sergeant (E-6), U.S. Air Force, *Appellant*

Appeal from the United States Air Force Trial Judiciary

Decided 16 June 2026

Military Judge: Shad R. Kidd;¹ Vicki L. Marcus (motions); J. Peter Ferrell (trial).

Sentence: Sentence adjudged 18 February 2025 by GCM convened at Joint Base Andrews Naval Air Facility Washington, Maryland. Sentence entered by military judge on 27 March 2025: Dishonorable discharge, confinement for 62 months, reduction to E-1, and a reprimand.

For Appellant: Major Frederick J. Johnson, USAF;² Captain John M. Fredericks, USAF.

For Appellee: Colonel G. Matt Osborn, USAF; Major Vanessa Bairos, USAF; Major Heather R. Bezold, USAF; Major Kate E. Lee, USAF; Mary Ellen Payne, Esquire.

Before JOHNSON, RAMÍREZ, and MORGAN, *Appellate Military Judges*.

Judge RAMÍREZ delivered the opinion of the court, in which Chief Judge JOHNSON and Judge MORGAN joined.

¹ A hearing was conducted pursuant to Article 30a, Uniform Code of Military Justice, 10 U.S.C. § 830a.

² Major Johnson withdrew from representing Appellant prior to the filing of Appellant's assignments of error brief.

This is an unpublished opinion and, as such, does not serve as precedent under AFCCA Rule of Practice and Procedure 30.4.

RAMÍREZ, Judge:

A military judge sitting as a general court-martial convicted Appellant, in accordance with his pleas and pursuant to a plea agreement, of six specifications of indecent recording in violation of Article 120c, UCMJ, 10 U.S.C. § 920c; and one specification of viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. § 934.^{3,4} The military judge sentenced Appellant to a dishonorable discharge, confinement for 62 months, reduction to the grade of E-1, and a reprimand.

The convening authority did not modify the findings or sentence, but deferred the reduction in grade and automatic forfeitures until entry of judgment, waived automatic forfeitures for six months or the expiration of Appellant's term of service for the benefit of Appellant's dependents, and provided the language of the adjudged reprimand.

Appellant raises two issues on appeal, which we have rephrased: (1) whether the military judge committed plain error by accepting Appellant's plea to Specification 1 of Charge I, despite the statute of limitations, and (2) whether the principle prohibiting unreasonable multiplication of charges applies to Specifications 2 through 6 of Charge I.

We find in Appellant's favor as to issue (1) and against Appellant as to issue (2). We set aside the finding of guilty as to Specification 1 of Charge 1, dismiss Specification 1 of Charge I, and reassess the sentence.

I. BACKGROUND

Appellant was into pornography; heavily and in different forms. He collected child pornography, he surreptitiously recorded nude images of a woman he was dating, PJ, while they were video chatting, and he secretly installed a

³ Unless otherwise noted, all references to the UCMJ, Rules for Courts-Martial (R.C.M.), and Military Rules of Evidence (Mil. R. Evid.) are to the *Manual for Courts-Martial, United States* (2019 ed.).

⁴ As part of the plea agreement, the Government withdrew and dismissed with prejudice one specification of extramarital sexual conduct (Specification 2 of Charge II) and one specification of possessing child pornography (Specification 3 of Charge II), both in violation of Article 134, UCMJ, 10 U.S.C. § 934. Appellant's assignments of error, however, claim that he was found guilty of these two specifications. He was not.

motion sensor video camera in the bathroom that was used by his three stepdaughters and their two friends.

Appellant was secretly video recording his three stepdaughters and their two friends in the bathroom of his home and while they showered in June of 2022. He did this until one of the stepdaughters discovered the camera later that month. Around the same time, the civilian authorities received a National Center for Missing and Exploited Children (NCMEC) CyberTip, identifying Appellant as a suspected uploader of child sexual abuse material (CSAM) to a Google account. As the investigation ensued, the evidence of the secret nude recordings of his girlfriend, PJ, was discovered.

Initially, the civilian authorities investigated and arrested Appellant for his misconduct associated with the child pornography. After some negotiating between the Air Force and the civilian authorities, the criminal activities associated with the child pornography, the secret recording of his stepdaughters and their friends, the secret recording of his girlfriend PJ, and the extramarital relationship with PJ, formed the basis of court-martial charges.

Appellant litigated several motions before his case went to trial, but ultimately, pursuant to a plea agreement, pleaded guilty to the six specifications of indecent recording in violation of Article 120c, UCMJ, and the one specification of viewing child pornography in violation of Article 134, UCMJ. Also, as part of this plea agreement, Appellant agreed to “waive all waivable motions,” and the Special Trial Counsel (STC) agreed to withdraw and dismiss without prejudice, to ripen into prejudice upon completion of appellate review, the remaining two specifications. *See* n.4 *supra*.

II. DISCUSSION

A. Appellant’s Improvident Plea

Appellant claims for the first time on appeal that the military judge committed reversible error by accepting Appellant’s guilty plea to the specification associated with the indecent recording of PJ (Specification 1 of Charge I) “because the alleged misconduct was outside the statute of limitations.”

1. Additional Background (Specification 1 of Charge I)

Appellant met PJ in early 2018 through a dating website and began to communicate via the mobile application Kik Messenger. Over time, their relationship became romantic and sexual. Their relationship ended at the end of 2019. During their relationship, Appellant and PJ engaged in sexual activity over video platforms, including Appellant watching PJ masturbate while they were video chatting. On numerous occasions, Appellant asked for PJ’s consent to

record her sexual activity during their video chats. PJ unequivocally declined these requests. He nonetheless recorded her, nude, and without her consent.

Initially, the offenses involving PJ for indecent recording and the extramarital relationship were preferred on 27 February 2024 and referred by the convening authority to a general court-martial on 5 April 2024. However, on 22 July 2024, a Special Trial Counsel assumed exclusive authority over all known and related offenses and preferred charges against Appellant associated with the indecent recordings, child pornography, and the extramarital relationship with PJ. *See* Article 24a, UCMJ, 10 U.S.C. § 824a; Article 1(17), UCMJ, 10 U.S.C. § 801(17). The receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command is dated 14 August 2024. The charges were then referred to a general court-martial by the Special Trial Counsel on 9 October 2024.

Specification 1 of Charge I of the 22 July 2024 charge sheet alleges that Appellant did “between on or about 1 March 2019 and on or about 31 December 2019, without legal justification or lawful authorization, knowingly make a recording of the private area of [PJ], without her consent and under circumstances in which she had a reasonable expectation of privacy.”

The stipulation of fact does not indicate exactly when the unlawful recording of PJ took place. The stipulation states Appellant and PJ met over the Internet in “early 2018,” and that “[o]ver time, their relationship became romantic and sexual in nature.” The stipulation further states that, “[t]hroughout their relationship, including between on or about 1 March 2019 and on or about 31 December 2019, [Appellant] and [PJ] engaged in consensual sexual activity over telephonic and video communications, to include [Appellant] masturbating and watching [PJ] masturbate over video.” The stipulation further states Appellant recorded and took screenshots of PJ without her knowledge “during their video calls.”

During the providence inquiry of Appellant’s guilty plea, the military judge asked Appellant why he was guilty of that specification. While Appellant provided the factual basis, he did not provide the date or date range when he committed the crime. The military judge then followed up by asking “[R]egarding the video recordings about when do you remember making those?” Appellant answered that he did so in “[l]ate 2018 to early 2019.” The military judge continued by asking, “[D]id you make any subsequent video recordings? So, you said late 2018, early 2019. Did you make any recordings after early 2019?” Before Appellant could answer, the military judge clarified by asking, “[D]id you make a recording in early 2019 or did you make a recording after that point?” Appellant responded, “Early 2019, Your Honor.” The military judge then asked, “[D]o you remember about when it was? And I am not expecting you to know an exact date, I know you are not going to say you know this exact

day, but do you [know] about when it might have been?” It was at this point that Appellant answered that it was “[b]efore March.” The military judge then asked if it was “[b]efore March but within the year 2019.” (Emphasis added). Appellant responded, “Yes, Your Honor,” and that ended the timeframe inquiry before the military judge moved on to the other elements of the offense.

The military judge then came back with, “[D]o you agree and admit that at least one of these occasions was sometime during the year 2019, so after the year turns over but within close in time to March 2019?” Appellant agreed that it was. The military judge then asked, “Do you agree this incident that you’re talking about where you used the screen capture application on your iPhone to record [PJ’s] breasts to include her areola or nipples was on it [sic] between on or about 1 March 2019 and on or about 31 December 2019?” Appellant responded, “Yes, Your Honor.” The military judge asked additional questions before concluding with, “[D]o you agree and admit that within the continental United States between on or about 1 March 2019 and on or about 31 December 2019, you knowingly recorded [PJ’s] private areas, that you did so without the consent of [PJ] and that [PJ] had a reasonable expectation of privacy at the time and that your conduct in making this recording was wrongful?” Appellant responded, “Yes, Your Honor.” The military judge then moved on to the other specifications and charges.

At sentencing, the military judge employed segmented sentencing with each sentence running consecutively; all confinement time totaled 62 months. The military judge sentenced Appellant to two months of confinement for Specification 1 of Charge I, the indecent recording of PJ.

2. Law

We review a military judge’s acceptance of “a guilty plea for an abuse of discretion and questions of law arising from the guilty plea de novo.” *United States v. Murphy*, 74 M.J. 302, 305 (C.A.A.F. 2015) (quoting *United States v. Inabinette*, 66 M.J. 320, 322 (C.A.A.F. 2008)). In reviewing a military judge’s acceptance of a guilty plea, we consider whether “the record as a whole show[s] a substantial basis in law and fact” to question the plea. *Inabinette*, 66 M.J. at 322 (internal quotation marks and citation omitted).

A military judge abuses his discretion in accepting a plea when “there exists ‘something in the record of trial, with regard to the factual basis or the law, that would raise a substantial question regarding the appellant’s guilty plea.’” *United States v. Hayes*, 70 M.J. 454, 457 (C.A.A.F. 2012) (quoting *Inabinette*, 66 M.J. at 322). Similarly, a military judge abuses his discretion by accepting a plea of guilty where a portion of the pleaded-to charged timeframe extends outside the statute of limitations. *United States v. Jensen*, No. ACM 39573, 2020 CCA LEXIS 163, at *10–11 (A.F. Ct. Crim. App. 19 May 2020) (unpub.

op.). “Erroneous findings, however, do not reach the providence of an appellant’s pleas which encompass acts of misconduct committed within a statutory limit.” *Id.* at *11 (citing *United States v. Lee*, 29 M.J. 516, 518 (A.C.M.R. 1989) (holding a time-barred period of a specification does not “affect the provident portions of guilty pleas encompassing acts of misconduct committed within the statutory limit”)).

Although we review a military judge’s acceptance of a guilty plea for an abuse of discretion, when an appellant raises a statute of limitations defense for the first time on appeal and appears to have been unaware of the right at trial, we review for plain error. *United States v. Briggs*, 78 M.J. 289, 295 (C.A.A.F. 2019), *rev’d on other grounds*, 592 U.S. 69 (2020). In a plain error analysis, the appellant bears “the burden of demonstrating that: (1) there was error; (2) the error was plain or obvious; and (3) the error materially prejudiced a substantial right of the accused.” *United States v. Girouard*, 70 M.J. 5, 11 (C.A.A.F. 2011).

Additionally, an appellate court “will not overturn a military judge’s acceptance of a guilty plea based on a mere possibility of a defense. The record must show a substantial basis in law and fact for rejecting the plea of guilty.” *United States v. Faircloth*, 45 M.J. 172, 174 (C.A.A.F. 1996) (citations omitted).

Rule for Courts-Martial (R.C.M.) 907(b)(2)(B) provides “that, if it appears that the accused is unaware of the right to assert the statute of limitations in bar of trial, the military judge shall inform the accused of this right.” Our superior court has similarly required that “whenever it appears that the statute of limitations has run against an offense, that fact will be brought to the attention of the accused by the court.” *United States v. Salter*, 20 M.J. 116, 117 (C.M.A. 1985) (internal quotation marks and citation omitted). Further, an appellate court does “not impose upon an accused a waiver of the right to plead the statute of limitations in bar of trial when the record does not disclose that he was aware of that right.” *Id.*

Absent offenses not applicable here, “a person charged with an offense is not liable to be tried by court-martial if the offense was committed more than five years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.” Article 43(b), UCMJ, 10 U.S.C. § 843(b).

3. Analysis

The charge sheet used at trial was the charge sheet preferred on 22 July 2024, received by the summary court-martial convening authority on 14 August 2024, and referred by the STC on 9 October 2024. However, in light of *United States v. Miller*, 38 M.J. 121, 124–25 (C.M.A. 1993), we assume for purposes of analysis that the prior charge sheet received by the summary court-

martial convening authority on 27 February 2024 is the operative charge sheet with respect to applying the statute of limitations to Specification 1 of Charge I.

In *Miller*, the charge sheet originally alleging the offenses in question was received by the summary court-martial authority within the statute of limitations. *Id.* at 122. However, after the original referral, the charges and specifications were redrafted onto a new charge sheet which was delivered to the summary court-martial authority after the statute of limitations expired, and this later charge sheet was used for the referral to the court-martial. *Id.* The United States Court of Military Appeals (CMA) explained:

[T]he requirement of the statute of limitations in Article 43[, UCMJ,] is that “sworn charges and specifications” be received by the summary court-martial authority within the prescribed period of time following commission of the offense. Thus, the timely receipt of “sworn charges and specifications” tolls the running of the statute as to those charges and specifications. The charge sheet merely is the form--the piece of paper--that contains those charges and that reflects that they were sworn and timely received; at least for purposes of this issue, that form has no independent importance of its own.

Accordingly, when an accused is arraigned on charges and specifications that appear might be barred by the statute of limitations, the critical question posed by Article 43[, UCMJ,] is whether the “sworn charges and specifications” were timely received, not whether the same piece of paper that contains those charges at the court-martial was the same piece of paper that conveyed those charges to the summary court-martial authority.

Id. at 124. The CMA held that because the sworn charges and specifications on the second charge sheet were the same as those on the original charge sheet, the “sworn charges and specifications” were received by the summary court-martial authority within the statute of limitations. *Id.* at 125.

In Appellant’s case, Specification 1 of Charge I of which Appellant was convicted is substantially the same Article 120c, UCMJ, offense alleged on the second charge sheet delivered to the summary court-martial convening authority on 27 February 2024. The only difference is that Specification 1 of Charge I omits the language identifying Appellant’s unit of assignment, which was included on the prior charge sheet. Accordingly, in light of *Miller*, for purposes of our analysis we consider the “sworn charge and specification” in question as having been received by the summary court-martial convening authority on 27

February 2024. Therefore, Appellant is not liable to be tried if the offense associated with PJ was committed before 27 February 2019.

According to Appellant, he committed this crime at some point between late 2018 and early 2019, but before March 2019. This means that the statute of limitations ran on some unknown date before March 2024. Although there is a narrow *possible* two-day overlap between when Appellant said the offense occurred and the tolling of the statute of limitations, the guilty plea inquiry raised a substantial basis to question the providency of the plea due to the likelihood of a statute of limitations defense. The military judge was required to inform Appellant the statute of limitations might bar a court-martial prosecution for Specification 1 of Charge I. *See* R.C.M. 907(b)(2)(B). However, the military judge failed to do so.

In this case, it was not just the “mere possibility of a defense,” it was the likelihood of an actual complete defense to Specification 1 of Charge I. Under the circumstances, including Appellant’s initial statement that the offense might have occurred as early as 2018, it should have appeared to the military judge that Appellant was “unaware of the right to assert the statute of limitations in bar of trial.” R.C.M. 907(b)(2)(B). Therefore, we find the military judge committed plain error and this error resulted in material prejudice. The military judge did not discuss with Appellant whether Appellant was aware of the right to assert the statute of limitations defense.

In its answer to Appellant’s assignment of error, the Government acknowledges two opinions from this court concerning a military judge failing to inform the appellant of his right to assert the statute of limitations defense during a guilty plea, citing *United States v. Sayers*, No. ACM 40142 (f rev), 2023 CCA LEXIS 199 (A.F. Ct. Crim. App. 27 Mar. 2023) (unpub. op.), and *United States v. Jensen*, No. ACM 39573, 2020 CCA LEXIS 163 (A.F. Ct. Crim. App. 19 May 2020) (unpub. op.). The Government further acknowledges that the plea agreement in *Sayers* included a “waive all waivable motions” provision, like in this case. Nonetheless, the Government requests that we not follow our own precedent because our superior court has recently granted a petition for review in a case by the United States Army Court of Criminal Appeals concerning tolling the statute of limitations during “time of war.” *United States v. Askins*, __ M.J. __, No. 26-0002/AR, 2026 CAAF LEXIS 118 (C.A.A.F. 4 Feb. 2026).

The Government now makes the same argument that it made in *Sayers*; specifically, that there is a “waive all waivable motions” clause in a plea agreement, and that Appellant received significant benefits from the plea, including having two specifications withdrawn and dismissed, and limiting confinement exposure. The Government asserts that where an accused has already agreed that he will not challenge any potential defects in his trial, there is no reason

for a military judge to inquire into his understanding of the statute of limitations. We are not convinced for the same reasons we explained in *Sayers*.

It is possible that had the military judge properly advised Appellant, Appellant might have decided to waive the statute of limitations for strategic reasons or for the reasons now cited by the Government. The military judge, however, did not ascertain whether Appellant wished to do so. When the military judge questioned trial defense counsel as to what motions were contemplated, the statute of limitations issue never came up. As a result, the military judge was legally obligated to inform Appellant of his right to assert the statute of limitations defense. Because this did not happen, the military judge committed plain error.

Significantly, the “statute of limitations” is the only waivable ground under the Rules for Courts-Martial that requires the military judge to specifically inform the accused of his rights when it appears that the accused is unaware of those rights. *See* R.C.M. 907(b)(2)(B). We are not at liberty to simply disregard requirements in the Rules for Courts-Martial that protect an accused’s right to make fully informed decisions regarding his defense.

We conclude that this error resulted in material prejudice, given that the clear language of the law indicates Appellant may have had a complete defense to this specification. Therefore, we find the military judge committed plain error by not informing Appellant of the statute of limitations defense. While we could authorize a rehearing, the Government takes the position that if we “find the military judge committed plain error and that Appellant was materially prejudiced as a result, [we] can remedy the error by dismissing Specification 1 of Charge I and reassessing the sentence.” As such we set aside and dismiss the finding of guilty as to Specification 1 of Charge I, and reassess the sentence.

B. Unreasonable Multiplication of Charges (Specifications 2–6 of Charge I)

Appellant claims that the Government subjected him to the unreasonable multiplication of charges for referring separate specifications for each of the five girls he recorded, without consent, while they were in the bathroom, nude. According to Appellant he “received five separate, consecutive sentences for a single act: the installation of a hidden camera and setting it to record upon motion.” He acknowledges that this issue has been waived, but requests that we, nonetheless, review the issue.

1. Additional Background

Appellant had two teenage stepdaughters and one adult stepdaughter living with him and his wife at the time of the offenses. His stepdaughters had two teenage friends that would sometimes stay with them. The house only had

two bathrooms with showers. Appellant and his wife used one and these five girls used the other.

Appellant then purchased and installed a hidden camera in the girls' bathroom to videorecord the girls while they were dressing and undressing, while they showered, and while they were using the bathroom. Appellant made, downloaded, and kept videos of each of the five girls on his phone. He was charged with the unlawful recording of their nude bodies. The recording of each individual girl was a separate specification, thus forming the basis for Specifications 2–6 of Charge I.

Prior to trial, Appellant filed a motion alleging unreasonable multiplication of charges. However, this was concerning Charge II, not Charge I. Additionally, part of Appellant's plea agreement included a provision to waive all waivable motions. When reviewing the plea agreement with Appellant, the military judge reviewed the clause waiving all waivable motions. The military judge asked trial defense counsel what motions Appellant was not filing pursuant to this provision. Trial defense counsel stated motions pursuant to Mil. Rule Evid. 412, 404(b), 503, 504, a motion for unreasonable multiplication of charges, a motion to suppress evidence, and a motion to compel discovery.

2. Law

Whether an appellant has waived an appellate issue is a question of law that we review de novo. *United States v. Givens*, 82 M.J. 211, 215 (C.A.A.F. 2022) (citation omitted). The voluntariness of a waiver is also reviewed de novo and “is measured by reference to the surrounding circumstances.” *United States v. Hasan*, 84 M.J. 181, 198 (C.A.A.F. 2024) (citation omitted). However, “for a waiver to be effective it must be clearly established that there was an intentional relinquishment of a known right or privilege.” *United States v. Suarez*, 86 M.J. 65, 70 (C.A.A.F. 2025) (citations omitted). When “an appellant intentionally waives a known right at trial, it is extinguished and may not be raised on appeal.” *United States v. Gladue*, 67 M.J. 311, 313 (C.A.A.F. 2009). “[A] valid waiver leaves no error for us to correct on appeal.” *United States v. Davis*, 79 M.J. 329, 331 (C.A.A.F. 2020).

An appellant's “express waiver of any waivable motions” waives claims of “unreasonable multiplication of charges, and extinguishe[s] his right to raise these issues on appeal.” *United States v. Gladue*, 67 M.J. 311, 314 (C.A.A.F. 2009).

3. Analysis

We find Appellant waived this issue. Here, pursuant to the plea agreement, Appellant waived all waivable motions. The military judge conducted a thorough inquiry to ensure Appellant understood the effect of this provision. The military judge specifically asked, “Do you understand that this term of your

plea agreement means that you give up the right to make this, and *any motion* which by law is given up when you plead guilty?” (Emphasis added). Appellant answered that he understood.

Next, we move to the issue of the court’s ability to address this matter, despite waiver. According to Appellant, if we find that he “did waive this issue through his plea agreement, [we] can correct it.” Appellant claims that “unreasonable multiplication of charges is a legal error that 10 U.S.C. § 866 allows this [c]ourt to correct despite waiver.” The Government takes the position that “[b]ased on the changes to Article 66(d)(1)(A), UCMJ, 10 U.S.C. § 866(d)(1)(A), in which Congress removed the phrase ‘should be approved,’ and because the offense in this case occurred after 1 January 2021, this [c]ourt no longer has the ability to pierce waiver with regard to findings.” While we disagree with the Government, and can pierce waiver, this case does not warrant such action by the court.

We find we do have the authority to pierce waiver in this case, but not for the reason Appellant asserts. Because not every finding of guilty entered into the record by the military judge pursuant to 10 U.S.C. § 860c was for an offense that occurred on or after 1 January 2021, the 2021 changes to Article 66, UCMJ, do not apply in this case. *See* Pub. L. No. 116-283 § 542(e)(2). Therefore, this court’s power to pierce forfeiture or waiver under the prior version of Article 66, UCMJ, applies in this case. *See, e.g., United States v. Hardy*, 77 M.J. 438, 443 (C.A.A.F. 2018).

Nevertheless, we find that there is no reason to pierce the clear and intelligent waiver in this case. We do not see this as an unfairly prejudicial matter for Appellant. He victimized five different girls. Each specification and sentence recognizes he targeted each girl. Appellant claims that he is being punished for one single act, “the installation of a hidden camera and setting it to record upon motion.” Appellant is simply wrong. He is being punished for recording five different girls, while they were nude, without their consent, in the one room of a house where people are most vulnerable.

C. Sentence Reassessment

Having modified the findings of guilty, we have considered whether we can reliably reassess Appellant’s sentence in light of the non-exclusive factors identified in *United States v. Winckelmann*, 73 M.J. 11, 15–16 (C.A.A.F. 2013).⁵ We

⁵ Although we could remand the record for further proceedings without affirming the remaining findings of guilty or a reassessed sentence, we note the Government recommends reassessment in the event we find the finding of guilty as to Specification 1 of Charge I must be set aside. Appellant similarly does not request a remand. Both the

find that we can. All four factors favor reassessment: the penalty landscape has not dramatically changed; Appellant was sentenced by a military judge; the remaining offenses capture the gravamen of the criminal misconduct; and the remaining offenses are of a type the judges on this court are familiar with. *See id.* Moreover, our task is simplified by the segmented sentences to confine the military judge imposed. We are confident that without the conviction for Specification 1 of Charge I, the military judge would have sentenced Appellant to a dishonorable discharge, confinement for 60 months, reduction to the grade of E-1, and a reprimand.⁶

III. CONCLUSION

The finding of guilty as to Specification 1 of Charge I is **SET ASIDE**. Specification 1 of Charge I is **DISMISSED**. We reassess the sentence to a dishonorable discharge, confinement for 60 months, reduction to the grade of E-1, and a reprimand. The remaining findings and sentence, as reassessed, are correct in law and fact, and no error materially prejudicial to Appellant's substantial rights occurred. Articles 59(a) and 66(d), UCMJ, 10 U.S.C. §§ 859(a), 866(d).⁷ Accordingly, the findings, as modified, and sentence, as reassessed, are **AF-FIRMED**.



FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE

Clerk of the Court

sentencing landscape of the case, and the procedural posture of the charge at issue makes sentence reassessment appropriate.

⁶ We find the wording of the reprimand remains consistent with the findings of guilty as modified.

⁷ We note the entry of judgment in this case has an error as to the third specification to Charge II, possession of child pornography, in that it is not identified as "Spec 3" in the "Charge(s)" column. The charge sheet and Statement of Trial Results properly reflect the possession of child pornography specification as Specification 3. Appellant has made no claim of prejudice, and we find none.