

**IN THE U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS  
WASHINGTON NAVY YARD  
WASHINGTON, D.C.**

**BEFORE**

**D.A. WAGNER**

**K.K. THOMPSON**

**E.B. STONE**

**UNITED STATES**

**v.**

**Victor F. MARTIN  
Hospitalman (E-3), U. S. Navy**

NMCCA 20060225

Decided 24 April 2007

Sentence adjudged 30 May 2006. Military Judge: C.C. Hale.  
Review pursuant to Article 66(c), UCMJ, of General Court-Martial  
convened by Commanding General, 3d Marine Logistics Group,  
Okinawa, Japan.

LtCol EDWARD C. DURANT, USMCR, Appellate Defense Counsel  
LCDR MONTE G. MILLER, JAGC, USN, Appellate Government Counsel  
LT JESSICA HUDSON, JAGC, USN, Appellate Government Counsel

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.

STONE, Judge:

A military judge, sitting as a general court-martial, convicted the appellant, pursuant to his pleas, of wrongfully receiving and possessing visual depictions of minors engaging in sexually explicit conduct, in violation of Articles 134, Uniform Code of Military Justice, 10 U.S.C. § 934. The appellant was sentenced to confinement for 36 months, forfeiture of all pay and allowances, reduction to pay grade E-1, and a dishonorable discharge. The convening authority approved the sentence as adjudged and, except for the dishonorable discharge, ordered it executed. Pursuant to the pretrial agreement, the convening authority suspended all confinement in excess of 12 months for a period of confinement served plus 12 months from the date of the convening authority's action.

After carefully considering the record of trial, the appellant's two assignments of error,<sup>1</sup> and the Government's

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<sup>1</sup> I. SPECIFICATION 1 AND 2 UNDER THE CHARGE REPRESENT AN UNREASONABLE MULTIPLICATION OF CHARGES.

response, we find that the appellant's assignments of error are without merit. We conclude that the findings and sentence are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant was committed. Arts. 59(a) and 66(c), UCMJ.

### **Unreasonable Multiplication of Charges**

In his first assignment of error, the appellant contends that Specification 1 of the Charge, alleging wrongful possession of child pornography, and Specification 2 of the Charge, alleging possession of child pornography, constitute an unreasonable multiplication of charges because the two specifications "exaggerate his criminality and essentially punish him for the same conduct." Appellant's Brief of 16 Jan 2007 at 1-5. We disagree.

Unreasonable multiplication of charges is a separate and distinct concept from multiplicity. *See United States v. Quiroz*, 55 M.J. 334, 337 (C.A.A.F. 2001). While multiplicity is based on the constitutional and statutory prohibitions against double jeopardy, the doctrine of unreasonable multiplication of charges stems from "those features of military law that increase the potential for overreaching in the exercise of prosecutorial discretion." *Id.*

This Court applies five factors in evaluating a claim of unreasonable multiplication of charges:

- 1) Did the accused object at trial that there was an unreasonable multiplication of charges and/or specifications?
- 2) Is each charge and specification aimed at distinctly separate criminal acts?
- 3) Does the number of charges and specifications misrepresent or exaggerate the appellant's criminality?
- 4) Does the number of charges and specifications unreasonably increase the appellant's punitive exposure?
- 5) Is there any evidence of prosecutorial overreaching or abuse in the drafting of the charges?

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II. A SENTENCE THAT INCLUDES A DISHONORABLE DISCHARGE AND 36 MONTHS' CONFINEMENT IS TOO SEVERE FOR THIS YOUNG SAILOR WHO TOOK FULL RESPONSIBILITY FOR HIS ACTIONS, AND WHO HAS MADE POSITIVE REHABILITATIVE STRIDES.

See *United States v. Quiroz*, 57 M.J. 583 (N.M.Ct.Crim.App. 2002)(en banc), *aff'd*, 58 M.J. 183 (C.A.A.F. 2003)(summary disposition); *accord Quiroz*, 55 M.J. at 339 ("this approach is well within the discretion of [this court] to determine how it will exercise its Article 66(c) powers."). Applying these factors to the appellant's case, we find that there has not been an unreasonable multiplication of charges.

First, the appellant did not object at trial to an unreasonable multiplication of charges. Second, each of the two specifications is aimed at distinctly separate criminal acts. The appellant's misconduct of receiving and viewing child pornography through the internet was a separate crime from his misconduct of saving, in a specific folder on his computer for his child pornography collection, those particular depictions that aroused him and that could be viewed for future use. "[T]he crime of receiving the pornographic images is complete at the time the appellant downloaded the images to view them. . . the appellant's possession of these images continued long after their receipt, because he had saved the images on the computer and was thus able to display them at will as he chose." *United States v. Madigan*, 54 M.J. 518, 521 (N.M.Ct.Crim.App. 2000). Third, the two specifications under the Charge do not exaggerate the appellant's criminality because they do not describe the same behavior. Prosecution Exhibit 1. Fourth, although the addition of a second specification under the Charge did increase the appellant's punitive exposure, it was not unreasonable. Finally, there is no evidence of prosecutorial overreaching or abuse in the drafting of a second specification under the Charge. Consequently, we do not find that the specifications constitute an unreasonable multiplication of charges.

### **Sentence Severity**

In his second assignment of error, the appellant alleges in summary manner that his sentence to confinement for 36 months, total forfeitures, reduction to an E-1, and a dishonorable discharge is inappropriate. We disagree and decline to grant relief.

The appellant was convicted of wrongfully receiving and possessing visual depictions of children engaging in sexually explicit conduct, including sexual intercourse and sodomy. He then searched for and viewed child pornography on the internet from June 2005 until February 2006. He downloaded and saved 75 pictures of what he believed to be actual minors engaged in explicit sexual behavior including a depiction of a child who appeared to be 7 years old being anally sodomized by an adult male and a video with a child who appeared to be three years old being raped.

After reviewing the entire record, we conclude that the adjudged sentence is appropriate for this particular offender and

his offenses. *United States v. Healy*, 26 M.J. 394 (C.M.A. 1988);  
*United States v. Snelling*, 14 M.J. 267 (C.M.A. 1982).

**Conclusion**

The approved findings and sentence are affirmed.

Chief Judge WAGNER and Senior Judge THOMPSON concur.

For the Court

R.H. TROIDL  
Clerk of Court