

**UNITED STATES NAVY-MARINE CORPS  
COURT OF CRIMINAL APPEALS  
WASHINGTON, D.C.**

**Before  
E.E. GEISER, R.G. KELLY, V.S. COUCH  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**JUAN J. CAMPOS  
SEAMAN (E-3), U.S. NAVY**

**NMCCA 200602523  
GENERAL COURT-MARTIAL**

**Sentence Adjudged:** 28 April 2006.

**Military Judge:** CAPT Bruce MacKenzie, JAGC, USN.

**Convening Authority:** Commander, Navy Region Hawaii, Pearl Harbor, HI.

**Staff Judge Advocate's Recommendation:** LCDR E. Korman, JAGC, USN.

**For Appellant:** LCDR Rebecca Snyder, JAGC, USN.

**For Appellee:** Maj Kevin Harris, USMC.

**17 January 2008**

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**OPINION OF THE COURT**  
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**AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.**

**KELLY, Judge:**

A military judge sitting as a general court-martial convicted the appellant, consistent with his pleas, of possessing and receiving child pornography in violation of Article 134, Uniform Code of Military Justice, 10 U.S.C. § 934. The appellant was sentenced to confinement for 48 months, forfeiture of all pay and allowances, reduction to pay grade E-1, and a dishonorable discharge. The convening authority (CA) approved the sentence as adjudged.

We have carefully reviewed the record of trial, the appellant's seven assignments of error<sup>1</sup> and the Government's response. 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.

### Background

During the providence inquiry, the appellant admitted that on several occasions between August and September 2005, he solicited and received approximately 20 confirmed images of child pornography on his laptop computer through the internet. After receiving the images, the appellant downloaded them onto his laptop computer.

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- I. WHETHER THE MILITARY JUDGE ERRED IN HOLDING THAT THE MAXIMUM SENTENCE FOR SPECIFICATION 1 OF THE CHARGE WAS DETERMINED BY REFERENCE TO 18 U.S.C. § 2252A AND NOT THE OFFENSE OF DISORDERLY CONDUCT UNDER ARTICLE 134, UCMJ.
- II. WHETHER IT WAS PLAIN ERROR PREJUDICIAL TO THE SUBSTANTIAL RIGHTS OF SN CAMPOS FOR THE MILITARY JUDGE TO ADMIT TESTIMONY REGARDING AN APPROPRIATE LENGTH OF CONFINEMENT BASED UPON THE POSSIBILITY THAT SN CAMPOS WOULD RECEIVE GOODTIME CREDIT AND OTHER UNFOUNDED ASSUMPTIONS NOT SUSCEPTIBLE OF PROOF RELATING TO THE TREATMENT OF SEXUAL OFFENDERS IN MILITARY CORRECTIONAL FACILITIES.
- III. WHETHER THE MILITARY JUDGE PLAINLY ERRED IN ADMITTING THE TESTIMONY OF DR. ARNOLD UNDER MILITARY RULE OF EVIDENCE 702 AND SUCH ERROR WAS PREJUDICIAL TO SN CAMPOS' SUBSTANTIAL RIGHTS BECAUSE DR. ARNOLD'S TESTIMONY WAS IRRELEVANT AND ITS PROBATIVE VALUE, IF ANY, WAS SUBSTANTIALLY OUTWEIGHED BY DANGER OF UNFAIR PREJUDICE.
- IV. WHETHER THE MILITARY JUDGE ERRED BY ADMITTING EVIDENCE IN AGGRAVATION WHERE THE EVIDENCE DID NOT DIRECTLY RELATE TO OR RESULT FROM SN CAMPOS' OFFENSES AS REQUIRED BY R.C.M. 1001(b)(4).
- V. WHETHER THE SENTENCING ARGUMENTS MADE BY TRIAL COUNSEL THAT SN CAMPOS IS A PEDOPHILE, THAT THE LENGTH OF CONFINEMENT SHOULD BE BASED ON DR. ARNOLD'S TESTIMONY REGARDING IRRELEVANT VARIABLES NOT SUSCEPTIBLE TO PROOF, AND THE LIKELIHOOD THAT SN CAMPOS WOULD SEEK TREATMENT FOR SEXUAL DEVIANCY CONSTITUTE PLAIN ERROR PREJUDICIAL TO SN CAMPOS' SUBSTANTIAL RIGHTS.
- VI. WHETHER TRIAL DEFENSE COUNSEL PROVIDED INEFFECTIVE ASSISTANCE TO SN CAMPOS BY FAILING TO OBJECT TO DR. ARNOLD'S TESTIMONY REGARDING THE TREATMENT AND SENTENCING OF MILITARY SEXUAL OFFENDERS AND TO THE TRIAL COUNSEL'S IMPROPER SENTENCING ARGUMENT.
- VII. WHETHER SN CAMPOS' SENTENCE TO FORTY-EIGHT MONTHS OF CONFINEMENT IS INAPPROPRIATELY SEVERE.

As part of a negotiated pretrial agreement (PTA), the appellant agreed to stipulate to the expected testimony of Dr. Dale Arnold, a psychologist and an expert on sex offenders and military sex offender treatment programs. Prosecution Exhibit 8. Dr. Arnold's testimony expressly stated that he did not specifically examine or diagnose the appellant. His professional opinion involved his assessment of the general recidivism rate among sexual offenders and the requirements of Navy sex offender treatment programs.

The appellant correctly notes that the stipulated expected testimony included a statement that military sex offender programs normally require a minimum of 48 months to complete.<sup>2</sup> Dr. Arnold's expected testimony also informed the military judge that in the doctor's professional opinion,, "[v]iewing child pornography predicted pedophilia better than a history of hands-on sexual offenses against children." *Id.* at 3.

### Aggravation Evidence

The appellant contends in his second and third assignments of error that the military judge committed plain error by admitting and considering a stipulation of expected testimony by an expert who had absolutely no familiarity with the appellant or his case, and who recommended an "optimal" sentence to confinement that considered collateral matters including "good time" credit for confinement. We disagree.

We note the appellant did not object to this testimony at trial. A plain error analysis is, therefore, appropriate. While there is ample precedent that witnesses may not invade the province of the fact-finder by testifying to a particular appropriate sentence for an individual, we do not find that Dr. Arnold's testimony violates this proscription. *See United States v. Ohrt*, 28 M.J. 301, 305 (C.M.A. 1989)(citing *United States v. Azure*, 801 F.2d 336 (8th Cir. 1986)).

Dr. Arnold's expected testimony clearly stated that it was wholly uninformed by an examination of the appellant as an individual or his military record. The doctor's testimony related, rather, to his own professional knowledge of the availability and requirements of sex offender treatment programs in the Navy generally. While the doctor did testify to a specific length of time necessary to complete the Navy program,

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<sup>2</sup> Regarding the Navy's sex offender treatment program, Dr. Arnold's expected testimony was that:

In order for a convicted sexual offender to participate in this program they must have a minimum sentence of 48 months. The reason for this is that when a person is confined their sentence is reduced for good behavior. Therefore, in order to complete the 26-month program a sentence of more than 26 months is required. A sentence of the length of eight or more years, in the opinion of this clinician is optimal.

Prosecution Exhibit 8 at 4.

his opinion was clearly focused on the nature of the treatment regime and not on the appellant as an individual offender.

We presume that the military judge knows the law and acted in accordance with the law. The weight given to this particular expert testimony was wholly within the discretion of the military judge who presumably considered it along with all the other evidence in the case. It is speculative to imply that this one piece of evidence was somehow dispositive of the military judge's sentencing determination.

A decision to prohibit expert testimony on the ground that it represents improper opinion on appropriateness of a particular punishment sometimes requires exercise of discretion by a military judge and usually such discretionary decisions do not constitute plain error. *United States v. Prevatte*, 40 M.J. 396, 398 (C.M.A. 1994)(citing *United States v. Vangelisti*, 30 M.J. 234 (C.M.A. 1990)). We conclude that the military judge did not commit error, much less plain error.

### Conclusion

With regard to the appellant's claim of ineffective assistance of counsel, we specifically find that the appellant has failed to meet his burden to show that his defense counsel's performance "fell below an objective standard of reasonableness." *United States v. States v. Edmond*, 63 M.J. 343, 345 (C.A.A.F. 2006)(citing *Strickland v. Washington*, 466 U.S. 668 (1984) and *United States v. Davis*, 60 M.J. 469, 473 (C.A.A.F. 2005)). We have considered the appellant's remaining assignments of error and find that, in light of our holding related to the stipulation of expected testimony of Dr. Arnold, they have no merit. *United States v. Reed*, 54 M.J. 37, 42 (C.A.A.F. 2000)(citing *United States v. Matias*, 25 M.J. 356, 363 (C.M.A. 1987)).

Accordingly, we affirm the findings and the approved sentence.

Senior Judge GEISER and Judge COUCH concur.

For the Court

R.H. TROIDL  
Clerk of Court