

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

**Before  
J.K. CARBERRY, L.T. BOOKER, J.E. STOLASZ  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**CHRISTOPHER J. SOLOMON  
CHIEF AVIATION BOATSWAIN'S MATE (HANDLING) (E-7)  
U.S. NAVY**

**NMCCA 201100025  
GENERAL COURT-MARTIAL**

**Sentence Adjudged:** 6 October 2010.

**Military Judge:** CAPT Moira D. Modzelewski, JAGC, USN.

**Convening Authority:** Commander, Navy Region, Mid-Atlantic, Norfolk, VA.

**Staff Judge Advocate's Recommendation:** CDR F.D. Hutchison, JAGC, USN.

**For Appellant:** LT Jentso J. Hwang, JAGC, USN.

**For Appellee:** LCDR Clayton G. Trivett, JAGC, USN; Capt Mark V. Balfantz, USMC.

**23 June 2011**

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**OPINION OF THE COURT**  
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**IN ACCORDANCE WITH RULE 18.2, NMCCA RULES OF PRACTICE AND PROCEDURE, THIS  
OPINION DOES NOT SERVE AS PRECEDENT.**

PER CURIAM:

A military judge sitting as a general court-martial convicted the appellant, pursuant to his pleas, of violating general regulations and possessing child pornography, respectively violations of Articles 92 and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 892 and 934. The convening authority (CA) approved the adjudged sentence of confinement for 12 months, reduction to pay grade E-1, and a dishonorable discharge from the United States Navy.

The appellant has raised three assignments of error: that the order violations constitute an unreasonable multiplication of charges; that the pornography violations constitute an unreasonable multiplication of charges; and that the CA erred by not noting in his action credit for lawful pretrial confinement. We agree that the order violations constitute an unreasonable multiplication of charges and that the pornography violations likewise constitute an unreasonable multiplication of charges. We will order merger of the affected specifications, but because the military judge considered the affected specifications multiplicious for sentencing, we need take no action on the approved sentence. The appellant's final assignment lacks merit.

The appellant was attached to, and lived aboard, USS DWIGHT D. EISENHOWER (CVN 69), and he had access to a Government computer in his workspace in the Air Department. During quiet times on board the ship, usually while at sea, the appellant would use the Government computer to search for pornography. He would also use the Government computer to view files of pornography that he possessed on a detachable drive.

The appellant also owned a laptop computer. On this computer, the appellant had video and still images of child pornography. When the ship (which was, as noted above, where he lived) was in port, he usually left this computer in his car onboard the Naval Station in Norfolk. He took this computer with him when the ship was at sea for exercises and when it deployed in the early part of 2009.

At trial, the appellant moved for relief from both multiplicity on findings regarding some of the pornography charges, and multiplicity for sentencing regarding both pornography and order violations. Record at 16. Before us, the appellant has recast his motion as one for relief from an unreasonable multiplication of charges.

To determine whether two or more charges constitute an unreasonable multiplication of charges, we apply the five-prong test endorsed in *United States v. Quiroz*, 55 M.J. 334, 338-39 (C.A.A.F. 2001). If we conclude that the "piling on" of charges is extreme or unreasonable, then we may use our authority under Article 66 to take necessary remedial action. *Id.* (citing *United States v. Quiroz*, 53 M.J. 600, 607 (N.M.Ct.Crim.App. 2000)).

#### **Unreasonable Multiplication of Order Violations**

The appellant's actions in using the Government computer to gain access to, and to view, pornography violated the Joint Ethics Regulation. The specific provision that the appellant violated addresses misuse of federal Government resources, prohibiting any use that is not official or that is unauthorized. The provision further defines "unauthorized" to include those uses that would reflect adversely on the Department of Defense and cites particularly "uses involving pornography." Department

of Defense Regulation 5500.7-R at ¶ 2-301a(2)(d) (Ch. 2, Mar. 25, 1996).

The specifications at issue embrace the identical period of time, and they both cite the identical provision from the Joint Ethics Regulation. During the course of the providence inquiry, the appellant reinforced the statements from the stipulation of fact, Prosecution Exhibit 1, that his actions all involved misuse of the equipment over an extended period of time. On all occasions, moreover, the appellant used the same equipment to commit the violations. The only distinction is the method of the misuse: searching on the one hand, viewing on the other.

We find that the strength of two of the factors - that the specifications be aimed at distinctly different criminal acts and that the specifications not exaggerate the criminality - requires that we merge the order violations into a single specification. We note, however, that the military judge considered the two specifications one for sentencing, so we have no concern that the appellant's punitive exposure was unreasonably increased.

#### **Unreasonable Multiplication of Pornography Offenses**

When we apply *Quiroz* to the pornography offenses, we reach the same result. As was the case with the order violations, the two pornography specifications at issue covered identical periods of time. While the offenses violated separate criminal code sections, one prohibiting possessing child pornography within the special maritime and territorial jurisdiction of the United States (which would include, as here, a warship on the high seas during a deployment), the other prohibiting possessing child pornography that has moved in interstate commerce, we note that the same physical object - a single laptop computer that contained approximately 70 images of child pornography - was involved in each violation. There is no indication that the "inventory" changed from shore to sea. It is only the jurisdictional element that differs in the two cases.

For much the same reasons as the order violations, we will order the two pornography specifications merged. We note, again, that the military judge's action in considering these two specifications a single offense for sentencing alleviates any concern about an unreasonable increase in punitive exposure.

#### **Failure to Note Pretrial Confinement Credit**

The charge sheet and the results of trial document (a copy of the latter of which went to the brig) both reflect lawful pretrial confinement lasting 6 days. The appellant has not alleged that he has been denied proper credit under *United States v. Allen*, 17 M.J. 126 (C.M.A. 1984). While it is doubtless a sound practice to note the credit in a promulgating order, there is no legal requirement to do so; see RULE FOR COURTS-MARTIAL 1114,

MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.). This assignment of error is therefore without merit.

### **Conclusion**

Specifications 1 and 2 of Charge I are combined into a single specification to allege violation of the Joint Ethics Regulation on divers occasions by gaining access to and viewing pornography on a federal communication system. Specifications 5 and 6 of Charge II are combined into a single specification to allege violation of section 2252A of title 18, United States Code, by possession on divers occasions of child pornography which had been transported in interstate or foreign commerce at or near Hampton Roads, Virginia, and in the special maritime and territorial jurisdiction of the United States. The modified findings and the approved sentence are affirmed. Arts. 59(a) and 66(c), UCMJ.

For the Court

R.H. TROIDL  
Clerk of Court