

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

**Before
F.D. MITCHELL, R.E. BEAL, P.D. KOVAC
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**MATTHEW J. TURNER
LANCE CORPORAL (E-3), U.S. MARINE CORPS**

**NMCCA 201000450
GENERAL COURT-MARTIAL**

Sentence Adjudged: 19 May 2010.

Military Judge: Maj Glen Hines, USMC.

Convening Authority: Commanding General, II Marine Expeditionary Force, Camp Lejeune, NC.

Staff Judge Advocate's Recommendation: Col C.K. Joyce, USMC.

For Appellant: CDR Howard Liberman, JAGC, USN.

For Appellee: Maj William Kirby, USMC.

15 February 2011

OPINION OF THE COURT

**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 one specification of possession of child pornography and one specification of receipt of child pornography, in violation of Article 134, Uniform Code of Military Justice, 10 U.S.C. §§ 934. The appellant was sentenced to 27 months confinement, reduction to pay grade E-1, total forfeiture of pay and allowances, and a dishonorable discharge. The convening authority (CA) approved the sentence as adjudged but suspended all confinement in excess of 16 months pursuant to a pretrial agreement.

This case is submitted to us on the merits. We have considered the record of trial and we find the findings, with one minor exception, to be correct in law and fact and, in light of our corrective action, that there are no errors materially prejudicial to the substantial rights of the appellant. Arts. 59(a) and 66(c), UCMJ.

In Specification 1 of the Charge, the appellant was accused of possession of child pornography under clauses 1 "and or" 2 of Article 134, UCMJ. During the colloquy between the military judge and the appellant, the appellant provided a factual basis to support the service discrediting nature of the possession, but did not discuss how the possession was prejudicial to good order and discipline. We will affirm only that part of the specification alleging a violation of clause 2 of Article 134, i.e., that the appellant's conduct is service discrediting.

The findings of the military judge on the Charge (violation of Article 134) and Specification 1 are affirmed, except for the words "prejudicial to good order and discipline in the armed forces and or." The finding of guilty as to the excepted words is set aside. The remaining findings and the sentence as approved by the convening authority are affirmed.

For the Court

R.H. TROIDL
Clerk of Court