

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

**Before
J.R. PERLAK, R.Q. WARD, M.D. MODZELEWSKI
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**SPENCER T. SOWERS
AVIATION ELECTRONICS TECHNICIAN AIRCRAFT EQUIPMENT
AIRMAN APPRENTICE (E-2), U.S. NAVY**

**NMCCA 201100659
GENERAL COURT-MARTIAL**

Sentence Adjudged: 27 September 2011.

Military Judge: CAPT John K. Waits, JAGC, USN.

Convening Authority: Commander, Navy Region Southeast,
Naval Air Station, Jacksonville, FL.

Staff Judge Advocate's Recommendation: CDR M.C. Holifield,
JAGC, USN.

For Appellant: LCDR Shannon A. Llenza, JAGC, USN.

For Appellee: LT Joseph M. Moyer, JAGC, USN.

19 July 2012

OPINION OF THE COURT

**THIS OPINION DOES NOT SERVE AS BINDING PRECEDENT, BUT MAY BE CITED AS
PERSUASIVE AUTHORITY UNDER NMCCA RULE OF PRACTICE AND PROCEDURE 18.2.**

PER CURIAM:

A military judge sitting as a general court-martial, convicted the appellant, consistent with his pleas, of knowingly soliciting a child to engage in unlawful sexual conduct, traveling to meet a child to the purpose of unlawful sexual conduct, and using a communication device to facilitate meeting a child for unlawful sexual conduct, in violation of Article

134, Uniform Code of Military Justice, 10 U.S.C. §§ 934.¹ The approved sentence was confinement for four years, reduction to pay grade E-1, and a dishonorable discharge, with the confinement portion limited by the terms of a pretrial agreement to thirty-six months, with the balance suspended for twelve months beyond the period of confinement served.

The case was submitted to us with a single assignment of error, alleging that the military judge abused his discretion in accepting the appellant's pleas without inquiring into the possible existence of an entrapment defense. Nothing in the transcript before us supports the assigned error, which is based on a parsed reading of prosecution exhibits offered in aggravation. Those exhibits, which are transcripts of communications between the appellant and a would-be fourteen-year-old girl, simply do not support appellant's claim of entrapment. The unconditional guilty pleas, supported by a thorough providence inquiry with a forthcoming accused, and stipulation of fact are not contradicted by the exhibits in aggravation, which fail to signal an affirmative defense that would require the military judge to explore entrapment. We are left without any substantial basis in law or fact for questioning the plea. See *United States v. Inabinette*, 66 M.J. 320 (C.A.A.F. 2008). After careful consideration, we find the matters raised by the appellant are unsubstantiated by the record and do not merit relief.

We conclude that the findings and the sentence are correct in law and fact, and no error materially prejudicial to the substantial rights of the appellant occurred. Arts. 59(a) and 66(c), UCMJ. Accordingly, we affirm the findings and the sentence as approved by the convening authority.

For the Court

R.H. TROIDL
Clerk of Court

¹ As appropriately clarified by the military judge with the appellant, the charges were brought under clauses 1 and 2 of Article 134, UCMJ, but incorporated amplification drawn from the Florida penal code to capture the disorder alleged.