

**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.

**ZACHARY R. WALTZ
MACHINIST'S MATE THIRD CLASS (E-4), U.S. NAVY**

**NMCCA 201100537
GENERAL COURT-MARTIAL**

Sentence Adjudged: 3 August 2011.

Military Judge: CAPT John 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: CAPT Diane L. Karr, JAGC, USN.

For Appellee: CDR Brendan C. Curran, JAGC, USN; LT Benjamin
J. Voce-Gardner, JAGC, USN.

29 March 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, pursuant to his pleas, of one specification of knowingly transferring obscene matter in violation of Title 18 U.S.C. § 1470; one specification of knowingly attempting to entice a minor to engage in a sexual act in violation of Title 18 U.S.C. § 2422(b); and one specification

of wrongfully receiving an image of child pornography, all violations of Article 134, Uniform Code of Military Justice, Title 10 U.S.C. § 934. The military judge sentenced him to confinement for four years, reduction to pay grade E-1, and a dishonorable discharge. Pursuant to a pretrial agreement, the convening authority suspended all confinement in excess of eighteen months.

In a summary assignment of error, the appellant argues that both the staff judge advocate's recommendation (SJAR) and the court-martial order (CMO) incorrectly list the age limitation for the 18 U.S.C. § 2422(b) specification.¹ The appellant does not allege any prejudice as a result; however, he does ask that we order the supplemental promulgating order to reflect the correct age limitation for this offense. The Government agrees with the error and the requested relief. Although we find no discernible prejudice from this clerical error, we agree with the parties that corrective action² in the supplemental court-martial order is warranted.

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 was committed. Arts. 59(a) and 66(c), UCMJ. We affirm the findings and sentence as approved by the convening authority. The supplemental court-martial order will accurately reflect the correct age limitation of 18 in Specification 2 of the Charge.

For the Court

R.H. TROIDL
Clerk of Court

¹ Title 18 U.S.C. § 2422(b) provides a minimum age of 18 whereas Title 18 U.S.C. § 1470 provides a minimum age of 16. Both the SJAR and the CMO list the correct minimum age of 16 in the § 1470 specification. However, the SJAR and CMO incorrectly list the minimum age as 16 vice 18 for the § 2422(b) specification. The correct age is listed in both specifications on the charge sheet, as well as in the stipulation of fact and the pretrial agreement. The military judge also used the correct age during the providence inquiry.

² The appellant is entitled to have all his official records correctly reflect the results of his court-martial. *United States v. Crumpley*, 49 M.J. 538-39 (N.M.Ct.Crim.App. 1998).