

Wednesday, 14 March 2012

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United States v. Valentin, Jr.

Panel Two - J.A. MAKSYM, B.L. PAYTON-O'BRIEN, R.Q. WARD
Appellate Military Judges

For Appellant: Mr. William A. Cassara and LCDR Michael R.
Torrise, JAGC, USN

For Appellee: Maj Paul Ervasti, USMC

A panel of members with enlisted representation sitting as a general court-martial convicted the appellant, contrary to his pleas, of two specifications of rape of a child, one specification of abusive sexual contact with a child, and two specifications of indecent acts, in violation of Articles 120 and 134, UCMJ, 10 U.S.C. §§ 920 and 934. The members sentenced the appellant to confinement for fifteen years, reduction to pay grade E-1, total forfeiture of pay and allowances, and a dishonorable discharge. The Convening Authority only approved fourteen years, ten months and fifteen days of confinement, but otherwise approved the sentence as adjudged and, except for the discharge, ordered the sentence executed.

The issue to be argued before the Court is as follows:

WHETHER THE MILITARY JUDGE ERRED IN INSTRUCTING THE MEMBERS ON THE ELEMENTS OF ARTICLE 120(B) BY INSTRUCTING ON A CONSTRUCTIVE FORCE THEORY?