

Thursday, 7 June 2012

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United States v. Hickerson

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

For Appellant: LT Daniel LaPenta, 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 one specification of transferring obscene material over the internet, one specification of attempting to entice a minor to engage in sexual activity, two specifications of possessing child pornography, and one specification of receiving child pornography, all in violation of Article 134, UCMJ, 10 U.S.C. § 934. The members sentenced the appellant to twenty years of confinement, reduction to pay grade E-1, total forfeiture of all pay and allowances, and a dishonorable discharge. The Convening Authority approved the sentence as adjudged, and, except for the punitive discharge, ordered the sentence executed.

The issues to be argued before the Court are as follows:

- I. WHETHER SPECIFICATION 2 OF THE CHARGE STATES AN OFFENSE UNDER CLAUSE 3 OF ARTICLE 134, UCMJ, AND IF THE SPECIFICATION FAILS TO STATE AN OFFENSE, WHETHER THIS COURT MAY AFFIRM A FINDING OF GUILTY UNDER EITHER CLAUSE 1 OR 2 OF ARTICLE 134, UCMJ?
- II. WHETHER, IN THE EVENT THE COURT FINDS THAT THE EVIDENCE WAS LEGALLY OR FACTUALLY INSUFFICIENT TO AFFIRM THE FINDINGS OF GUILTY TO SPECIFICATIONS 4, 6, AND 7 OF THE CHARGE UNDER CLAUSE 3 OF ARTICLE 134, UCMJ, THE COURT MAY AFFIRM FINDINGS OF GUILTY UNDER EITHER CLAUSE 1 OR 2 OF ARTICLE 134, UCMJ?