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

**Before**
**R.E. VINCENT, E.C. PRICE, J.R. PERLAK**
**Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**TYRONE C. HUDSON**
**PERSONNEL SPECIALIST SECOND CLASS (E-5), U.S. NAVY**

**NMCCA 200900287**
**GENERAL COURT-MARTIAL**

**Sentence Adjudged:** 03 March 2009.
**Military Judge:** CAPT James Harty, JAGC, USN.
**Convening Authority:** Commander, Navy Region Southeast, Jacksonville, FL.
**Staff Judge Advocate's Recommendation:** LCDR F.J. Yuzon, JAGC, USN.
**For Appellant:** LT Dillon Ambrose, JAGC, USN.
**For Appellee:** LT Timothy Delgado, JAGC, USN.

**24 November 2009**

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**OPINION OF THE COURT**

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**AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.**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 indecent liberties with a child and sodomy, in violation of Articles 120 and 125, Uniform Code of Military Justice, 10 U.S.C. §§ 920 and 925. The appellant was sentenced to confinement for 25 years, reduction to pay grade E-1, and a dishonorable discharge. The convening authority approved the sentence as adjudged.

The appellant initially raised three assignments of error but presently only two remain.[1] First, the appellant alleges that a term in the pretrial agreement is contrary to public policy and is fatally ambiguous. Secondly, the appellant challenges the providency of the appellant's guilty plea to the indecent liberties with a child charge and specification, alleging a lack of evidence tying the child's presence to the "gratification" of the sexual act.

We have examined the record of trial, the assignments of error, the Government's response and the appellant's reply. We conclude that the findings and sentence are correct in law and fact and that no error was committed that was materially prejudicial to the substantial rights of the appellant. Arts. 59(a) and 66(c), UCMJ.

**Public Policy and Fatal Ambiguity in the Pretrial Agreement**

The appellant avers, *inter alia*, that he was "forced" to accept a term which is ambiguous and contrary to public policy. As a preliminary matter, the notion of force or involuntariness as to the pretrial agreement is unsupported by the record. Record at 118. As to the posture of this appeal, the Government has fully complied with the terms of the pretrial agreement and no condition has arisen which would call into question the ambiguity alleged in this assignment of error. Any perceived ambiguity in the term in question has been rendered moot by the Government's compliance with the pretrial agreement as intended by the parties. *See United States v. Acevedo,* 50 M.J. 169, 172 (C.A.A.F. 1999). Any further analysis or discussion of the language at this point would lead to a strictly advisory opinion, something this court declines to undertake. *United States v. Chisholm*, 59 M.J. 151, 152 (C.A.A.F. 2003). As such, this assignment of error is without merit.

**Improvident Plea**

In his third assignment of error, the appellant claims his guilty plea to the indecent liberties with a child charge and specification was improvident, for lack in evidence tying the child's presence to the gratification of the sexual act.

We review a military judge's decision to accept a guilty plea for an abuse of discretion and questions of law arising from a guilty plea *de novo*. In order to reject a guilty plea on appellate review, the record must show a substantial basis in law or fact for questioning the plea. *United States v. Inabinette*, 66 M.J. 320 (C.A.A.F. 2008); *United States v. Irvin*, 60 M.J. 23,

[1] As averred to in appellant's reply brief of 15 October 2009, the second assignment of error addressing the Government's compliance with the terms of the pretrial agreement has been resolved and thereby rendered moot by actions taken by the Government. A detailing of the resolution of the pay provisions per the pretrial agreement are now part of the record through the granting of the Government's Consent Motion to Attach granted on 18 September 2009.

24 (C.A.A.F. 2004)(citing *United States v. Jordan*, 57 M.J. 236, 238 (C.A.A.F. 2002)).

Applying the *de novo* standard, we find that the providence inquiry and Prosecution Exhibit 1, the stipulation of fact, amply demonstrate all elements of the offense were met. The appellant's argument that the presence of the victim, the appellant's two-year-old son, was akin to mere presence and not tied to indecent liberties taken, is unpersuasive. The facts developed in the providence inquiry and as stipulated to indicate an immediate temporal and physical nexus of the crime to this child victim. In a period of roughly 15 to 20 minutes alone with the victim, the facts indicate the appellant anally sodomized the child and then masturbated, prior to being discovered by his spouse and the victim's mother. The record does not support the appellant's contention that the child, in this short timeline, was transformed from sodomy victim to "passive observer" of the masturbation, as argued by the appellant. By the appellant's own statements to the military judge, and bolstered by the facts as stipulated to by the parties, we find there is no substantial basis in law or fact to question this plea and this assignment of error is without merit.

**Conclusion**

The findings and sentence as approved by the convening authority are affirmed.

For the Court

R.H. TROIDL
Clerk of Court