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.

CHRISTOPER A. PRINCIPI
SEAMAN APPRENTICE (E-2), U.S. NAVY

NMCCA 200900437
GENERAL COURT-MARTIAL

Sentence Adjudged: 29 May 2009.
Military Judge: CDR Holiday Hanna, JAGC, USN.
Convening Authority: Commander, Navy Region, Mid-Atlantic, Norfolk, VA.
Staff Judge Advocate's Recommendation: LCDR W.A. Record, Jr., JAGC, USN.
For Appellant: CAPT Michael Detzky, JAGC, USN.
For Appellee: Mr. Brian Keller, Esq.

22 October 2009

OPINION OF THE COURT

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.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, consistent with his pleas, of two specifications involving possession of child pornography in violation of Article 134, Uniform Code of Military Justice, 10 U.S.C. § 934. The approved sentence was confinement for 18 months, reduction to pay grade E-1, and a bad-conduct discharge.

The case was submitted to us without assignment of error. The misconduct reflected in the two possession specifications was the same, knowing possession of a computer hard drive that contained images of child pornography. However, this misconduct was charged in one specification as conduct prejudicial to good order and discipline and service discrediting under clauses 1 & 2 of Article 134, and charged in another specification as a violation of 18 U.S.C. § 2252A(a)(5) under clause 3 of Article 134. The military judge found the offenses multiplicious for sentencing.

The Government is entitled to pursue alternative charging in anticipation of varying contingencies of proof. The various clauses of Article 134 provide alternate theories of criminal liability, but do not thereby state separate offenses. *United States v. Medina*, 66 M.J. 21, 26 (C.A.A.F. 2008)(citing *United States v. Sapp,* 53 M.J. 90, 92 (C.A.A.F. 2000)). Therefore, in that the military judge did not compel the Government to choose between statutory theories, or merge them for findings, one of the findings in this case cannot stand.

The military judge found the appellant guilty under both theories advanced in the specifications, later ruling that he would consider them multiplicious for sentencing. In *United States v. Quiroz*, 55 M.J. 334 (C.A.A.F. 2001), the Court of Appeals for the Armed Forces listed five factors we could consider in determining whether a multiplication of charges is unreasonable. The third factor addresses the prejudice inherent in "misrepresenting or exaggerating" an appellant's criminality. Separate and distinct from this, the fourth factor addresses whether the charges and specifications "unfairly increase" the appellant's punitive exposure. *Id.* at 338.

The military judge's sentencing ruling mitigated any potential sentencing prejudice to the appellant arising from the Government's alternative charging methodology, but the appellant was nonetheless prejudiced in that he was found guilty of two separate specifications involving child pornography when he should have been convicted of no more than one specification. *See United States v. Lloyd*, 46 M.J. 19, 22 (C.A.A.F. 1997). Further corrective action by the military judge with respect to findings was necessary. The charges and specifications in their present form exaggerate the appellant's criminality. We take appropriate action in our decretal paragraph.

The findings of guilty to Specification 2 and to the Charge are affirmed. The finding of guilty to Specification 1 of the

Charge is set aside and Specification 1 is dismissed. The approved sentence is affirmed. We conclude that the findings and sentence, as modified herein, are correct in law and fact, and no error materially prejudicial to the substantial rights of the appellant remains. Arts. 59(a) and 66(c), UCMJ.

For the Court

R.H. TROIDL
Clerk of Court