This opinion is subject to administrative correction before final disposition.

United States Navy-Marine Corps Court of Criminal Appeals

Before
MONAHAN, STEPHENS, and DEERWESTER
Appellate Military Judges

UNITED STATES
Appellee

v.

Daniel E. WRAPE
Corporal (E-4), U.S. Marine Corps
Appellant

No. 202000189

Decided: 30 December 2020

Appeal from the United States Navy-Marine Corps Trial Judiciary

Military Judge:
Stephen F. Keane

Sentence adjudged 29 May 2020 by a general court-martial convened at Marine Corps Base Camp Pendleton, California, consisting of a military judge sitting alone. Sentence in the Entry of Judgment: reduction to E-1, confinement for seventy-seven months, and a dishonorable discharge.

For Appellant:
Commander C. Eric Roper, JAGC, USNR

For Appellee:
Brian K. Keller, Esq.

This opinion does not serve as binding precedent under NMCCA Rule of Appellate Procedure 30.2(a).

PER CURIAM:

After careful consideration of the record, submitted without assignment of error, we have determined the military judge did not establish an adequate basis to accept a portion of Appellant's guilty plea.[1] Appellant pleaded guilty to the sole Specification of Charge III, for wrongfully distributing child pornography under Article 134, Uniform Code of Military Justice, and to both Clause 1 [conduct to the prejudice of good order and discipline] and Clause 2 [conduct of a nature to bring discredit upon the armed forces] of the terminal elements of the Specification.

The Government charged Appellant in the conjunctive for both Clause 1 and Clause 2 of the terminal element, but a substantial basis in fact was not developed in either the providence inquiry or the stipulation of fact to show Appellant's conduct was prejudicial to good order and discipline. In support of Clause 1, Appellant merely stated his conduct was prejudicial to good order and discipline because he distributed the child pornography while in his barracks room located onboard a military installation. Therefore, there is a substantial basis to question in law and fact Appellant's guilty plea to the language that embodied the terminal element for Clause 1.[2] We will, thus, set aside the Clause 1 language from the Specification in our decretal paragraph.

For Clause 2 however, "proof of the conduct itself *may* be sufficient for a rational trier of fact to conclude beyond a reasonable doubt that, under the circumstances, it was of a nature to bring discredit upon the armed forces."[3] We find Appellant's conduct itself, which he amply admitted on the record, provides an adequate basis to support his guilty plea to that part of the Specification that averred his conduct in distributing child pornography was of a nature to bring discredit upon the armed forces. Therefore, we find there is not a substantial basis to question Appellant's guilty plea to the language that embodied Clause 2 of the terminal element.

Having dismissed the language at issue, we look to the non-exclusive list of five factors in *United States v. Winckelmann*[4] to determine whether to reassess

---

[1] *See United States v. Inabinette*, 66 M.J. 320, 321-22 (C.A.A.F. 2008).

[2] *Id*. at 322.

[3] *United States v. Phillips*, 70 M.J. 161, 163 (C.A.A.F. 2011) (emphasis in the original).

[4] 73 M.J. 11 (C.A.A.F. 2013).

a sentence or to order a sentencing rehearing. Under all the circumstances presented, we find we can reassess the sentence and it is appropriate for us to do so. Absent the error, we are confident the court-martial would have imposed a sentence no less severe than that contained in the Entry of Judgment—seventy-seven months' confinement, reduction to E-1, and a dishonorable discharge.

Finally, we conclude the reassessed sentence purges the error from the original sentence and is an appropriate punishment for the modified findings and this offender.

CONCLUSION

The finding of guilty of the language "was to the prejudice of good order and discipline in the armed forces and" contained in the sole Specification of Charge III is **SET ASIDE**, and that language is **DISMISSED WITH PREJUDICE**. After careful consideration of the record and briefs of the appellate counsel, we have determined that, following our corrective action, the remaining approved findings and the sentence are correct in law and fact and that no error materially prejudicial to Appellant's substantial rights remains.[5] Accordingly, the remaining findings and sentence in the Entry of Judgment,[6] and as reassessed by this Court, are **AFFIRMED**.

FOR THE COURT:

RODGER A. DREW, JR.
Clerk of Court

---

[5] UCMJ arts 59, 66.

[6] The summary of the Specification of Charge III in the Entry of Judgment does not indicate the specific clause or clauses upon which the military judge found Appellant guilty. Thus, the Entry of Judgment as it currently exists does not require use to modify it in accordance with Rule for Courts-Martial 1111(c)(2).