

This opinion is subject to administrative correction before final disposition.

United States Navy - Marine Corps
Court of Criminal Appeals

Before
GASTON, HOUTZ, and BAKER
Appellate Military Judges

UNITED STATES
Appellee

v.

Benjamin D.J. MILLER
Gas Turbine Systems Technician Second Class (E-5)
U.S. Navy
Appellant

No. 202000225

Decided: 30 March 2021

Appeal from the United States Navy-Marine Corps Trial Judiciary

Military Judges:
Michael J. Luken (arraignment)
Hayes C. Larsen (trial)

Sentence adjudged 2 July 2020 by a general court-martial convened at Naval Station Norfolk, Virginia, consisting of a military judge sitting alone. Sentence in the Entry of Judgment: reduction to E-1, confinement for 18 months, and a dishonorable discharge.¹

For Appellant:
Captain Kimberly D. Hinson, JAGC, USN

¹ Pursuant to a plea agreement, the convening authority suspended all confinement in excess of nine months and suspended the adjudged reduction for six months.

United States v. Miller, NMCCA No. 202000225
Opinion of the Court

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 that the findings and sentence are correct in law and fact and that no error materially prejudicial to Appellant's substantial rights occurred. Uniform Code of Military Justice arts. 59, 66, 10 U.S.C. §§ 859, 866.

However, we note that the Entry of Judgment does not accurately reflect the disposition of the charges. Although we find no prejudice, Appellant is entitled to have court-martial records that correctly reflect the content of his proceeding. *United States v. Crumpley*, 49 M.J. 538, 539 (N-M. Ct. Crim. App. 1998). In accordance with Rule for Courts-Martial 1111(c)(2), we modify the Entry of Judgment and direct that it be included in the record.

The findings and sentence are **AFFIRMED**.



FOR THE COURT:


RODGER A. DREW, JR.
Clerk of Court

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United States Navy - Marine Corps
Court of Criminal Appeals

UNITED STATES

v.

Benjamin D.J. MILLER
Gas Turbine Systems Technician
Second Class (E-5)
U.S. Navy

Accused

NMCCA NO. 202000225

ENTRY
OF
JUDGMENT

As Modified on Appeal

30 March 2021

On 2 July 2020, the Accused was tried at Naval Station Norfolk, Virginia, by a general court-martial, consisting of a military judge sitting alone. Military Judge Hayes C. Larsen presided.

FINDINGS

The following are the Accused's pleas and the Court's findings to all offenses the convening authority referred to trial:

Charge I: Violation of Article 134, Uniform Code of Military Justice, 10 U.S.C. § 934.

Plea: Guilty.

Finding: Guilty.

Specification 1: Possession of Child Pornography at or near Great Lakes, Illinois, on or about 17 June 2016, to wit: digital images of minors, engaging in sexually explicit conduct, on his Verizon Wireless Synchronoss Account.

Plea: Guilty.

Finding: Guilty.

Specification 2: Possession of Child Pornography at or near Norfolk, Virginia, on or about 7 November 2016, to wit: digital images of minors, engaging in sexually explicit conduct, on his Samsung Galaxy S5 cellular phone.

Plea: Guilty.

Finding: Guilty.

Specification 3: Possession of Child Pornography at or near Great Lakes Illinois, on or about June 2016, to wit: digital images of minors, engaging in sexually explicit conduct, on his ASUS Model G752V notebook laptop computer.

Plea: Guilty.

Finding: Guilty.

Specification 4: Possession of Child Pornography at or near Great Lakes Illinois, on or about June 2016, to wit: digital images of what appear to be minors, engaging in sexually explicit conduct, on his ASUS Model G752V notebook laptop computer.

Plea: Guilty.

Finding: Guilty.

Specification 5: Possession of Child Pornography at or near Norfolk, Virginia, on or about 16 August 2016, to wit: digital images of minors, engaging in sexually explicit conduct, on his Verizon Wireless Synchronoss Technologies Account.

Plea: Guilty.

Finding: Guilty.

Specification 6: Possession of Child Pornography at or near Norfolk, Virginia, on or about 16 August 2016, to wit: digital images of what appear to be minors, engaging in sexually explicit conduct, on his Verizon Wireless Synchronoss Technologies Account.

Plea: Guilty.

Finding: Guilty.

**Charge II: Violation of Article 107, Uniform Code of Military Justice,
10 U.S.C. § 907.**

Plea: Guilty.

Finding: Guilty.

Specification 1: False Official Statement on or about 7 November 2016.

Plea: Guilty.

Finding: Guilty.

**Specification 2: False Official Statement on or about 22 November
2016.**

Plea: Guilty.

Finding: Guilty.

SENTENCE

On 2 July 2020, the military judge sentenced the Accused to the following:

Reduction to pay grade E-1.


Confinement for 18 months.

A dishonorable discharge.

The convening authority suspended confinement in excess of nine months for 30 months and suspended the adjudged reduction to pay grade E-1 for a period of six months from 31 July 2020.



FOR THE COURT:


RODGER A. DREW, JR.
Clerk of Court