

Friday, 20 September 2019 (1245)

Laboon Center, Mitscher Hall
United States Naval Academy
101 Cooper Road
Annapolis, Maryland 21402

United States v. Kunishige, NMCCA No. 201800110

Before the Court (Panel 2): Senior Judge Tang
Judge Lawrence
Judge Stephens

For Appellant: LT Dan Rosinski, JAGC, USN

For Appellee: Capt Brian Farrell, USMC

A panel of members with enlisted representation sitting as a general court-martial convicted Appellant, contrary to his pleas, of violation of a lawful order, rape and sexual abuse of a child, sexual assault, aggravated assault, assault consummated by battery, solicitation and distribution of child pornography, receipt and possession of child pornography, obstruction of justice, and adultery, in violation of Articles 92, 120, 120b, 128, and 134, UCMJ, 10 U.S.C. §§ 892, 920, 920b, 928, 934 (2016). The members sentenced Appellant to thirty-nine years of confinement, reduction to pay grade E-1, forfeiture of all pay and allowances, and a dishonorable discharge. The Convening Authority approved the sentence as adjudged and, except for the dishonorable discharge, ordered the sentence executed.

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

I. The United States argues that Appellant waived his right to discovery of communications relating to the members' selection process. Did Appellant waive his right to discovery in light of: 1) the civilian trial defense counsel's two written motions; 2) the military judge's order granting the motion to compel discovery; 3) the civilian trial defense counsel's repeated attempts to enforce the military judge's order during trial; and 4) the trial counsel's conflicting statements about the existence of discovery and completeness of discovery provided?

II. Did the government's actions in 1) disclosing responsive communications on the last day of trial during presentencing proceedings; and 2) disclosing additional responsive communications shortly before a post-trial Article 39(a) session constitute a discovery violation?

III. Was Appellant materially prejudiced by either alleged discovery violation?

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