

# UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before  
KERN, ALDYKIEWICZ, and MARTIN  
Appellate Military Judges

**UNITED STATES, Appellee**  
**v.**  
**Sergeant JOHN C. KING**  
**United States Army, Appellant**

ARMY 20120136

Third Army, United States Army Central  
Reynold P. Masterton, Military Judge  
Colonel Stephanie L. Stephens, Staff Judge Advocate

For Appellant: Major Richard E. Gorini, JA; Captain Matthew M. Jones, JA (on brief).

For Appellee: Lieutenant Colonel Amber J. Roach, JA; Major Catherine L. Brantley, JA; Captain Bradley M. Endicott, JA (on brief).

11 April 2013

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SUMMARY DISPOSITION  
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Per Curiam:

A military judge sitting as a general court-martial convicted appellant, pursuant to his pleas, of four specifications of violating a general order and four specifications of possession of child pornography, in violation of Articles 92 and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 892, 934 (2006) [hereinafter UCMJ]. The convening authority approved the adjudged sentence to a bad-conduct discharge, confinement for ten months, forfeiture of all pay and allowances, and reduction to the grade of E-1.

On appeal, appellant raises a single assignment of error regarding Specification 2 of Charge I, a possession of child pornography specification of which he was convicted. That specification alleged appellant wrongfully and knowingly possessed an external hard drive containing child pornography as defined by 18 U.S.C. § 2256(8), including a named image file and several named video files. Appellant now takes issue with the one named image file within the specification: “Kids Teens Women (Porno-Lolitas-Preteens-Reelkiddymov-R@Ygold-Hussyfans-

Underage-Girls-Children-Pedofilia-Pthc-Ptsc-Xxx-Sexy) 14 (2).jpg” [hereinafter “Kids”]. The image under this file name depicts a young girl lying on her stomach in apparent undress facing the camera with the top of her buttocks exposed, but without her breasts or genitals exposed. In addition, the girl is not engaged in a sexual act.

We review a military judge’s decision to accept a plea of guilty for an abuse of discretion. *United States v. Inabinette*, 66 M.J. 320, 322 (C.A.A.F. 2008). A guilty plea will be set aside on appeal only if an appellant can show a substantial basis in law or fact to question the plea. *Id.* (citing *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991)). The court applies this “substantial basis” test by determining whether the record raises a substantial question about the factual basis of appellant’s guilty plea or the law underpinning the plea. *Id.* See UCMJ art. 45; Rule for Courts-Martial 910(e).

Appellant argues, and the government concedes, that the “Kids” image does not constitute child pornography under the 18 U.S.C. § 2256(8) definition incorporated into the specification. After reviewing the image, this court agrees that it does not constitute child pornography under the statutory definition because it does not depict sexually explicit conduct; specifically, the image does not include a lascivious exhibition of the genitals or pubic area. Finding no other issue with that specification, we except out only that particular image and affirm the specification with the remaining listed video files.

Therefore, this court affirms only so much of the finding of Specification 2 of Charge I as finds the appellant did, “on or about 20 June 2011, at or near Camp Arifjan, Kuwait, wrongfully and knowingly possess an 500 gigabyte (500 GB) external hard disk drive bearing the serial number 2GE3WHL0, which did contain child pornography as defined by 18 U.S.C. Section 2256(8), including the video files: ‘(Pthc) Threesome - (9yo Girl & 10yo Boy & 15yo Boy).mpg’, ‘(Ptch) 10Yo Mandy - Real Incest 2.mpg’, ‘ANNI 10 Hussyfan) (Ptch) Vicky 7yo and 10yo 69 Pedo Child Porno Lolita.mpg’, ‘Kiddy-((Hussyfan)) Pthc Americanpie New Vicky.mpg’, ‘PTHC - Vicky-11yo - like pro.mpg’, ‘Pthc - 9Yo Linda TakesDad Up Ass And Sucks His Cum And Swallows.mpg’, ‘preteen pedo (pthc) vicky\_9yo\_early works (rare) beautiful 24min.mpg’, and ‘pthc Vicky wth stockings very hot.mpg’, which conduct was prejudicial to good order and discipline and likely to bring discredit upon the armed forces.”

On consideration of the entire record, including the matters personally raised by appellant pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), the remaining findings of guilty are AFFIRMED. Reassessing the sentence on the basis of the error noted, the entire record, and in accordance with the principles of *United States v. Sales*, 22 M.J. 305 (C.M.A. 1986), and *United States v. Moffeit*, 63 M.J. 40

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(C.A.A.F 2006), to include the factors identified by Judge Baker in his concurring opinion, the sentence as approved by the convening authority is AFFIRMED.



FOR THE COURT:

A handwritten signature in black ink, reading "Malcolm H. Squires, Jr." in a cursive script.

MALCOLM H. SQUIRES, JR.  
Clerk of Court