

# UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before  
TOZZI, CAMPANELLA, and CELTNIIEKS  
Appellate Military Judges

**UNITED STATES, Appellee**  
**v.**  
**Captain DANIEL E. HADDOX.**  
**United States Army, Appellant**

ARMY 20140123

Headquarters, United States Army Recruiting Command  
Elizabeth Kubala, Military Judge (arraignment)  
Tyesha L. Smith, Military Judge (trial)  
Colonel Cheryl Renea Lewis, Staff Judge Advocate

For Appellant: Colonel Kevin Boyle, JA; Major Aaron R. Inkenbrandt, JA; Captain Heather L. Tregle, JA (on brief).

For Appellee: Colonel Mark H. Sydenham, JA; Major A.G. Courie III, JA; Major Daniel D. Derner, JA; Captain Timothy C. Donahue, JA (on brief).

24 August 2015

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SUMMARY DISPOSITION  
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CAMPANELLA, Judge:

A military judge sitting as a general court-martial convicted appellant, pursuant to his pleas, of one specification of violating a lawful general regulation, three specifications of aggravated sexual contact with a child, two specifications of indecent liberties with a child, and one specification of possession of child pornography in violation of Articles 92, 120, and 134 Uniform Code of Military Justice, 10 U.S.C. §§ 892, 920, 934 (2006) [hereinafter UCMJ]. The military judge sentenced appellant to a dismissal and confinement for six years. The convening authority approved the adjudged sentence. Appellant was credited with three days confinement credit.

Appellant's case is before this court for review under Article 66, UCMJ. Appellate counsel assigned two errors; one assigned error warrants discussion and relief.

## **BACKGROUND**

Appellant was originally charged with and pleaded guilty to The Specification of Additional Charge 1 [sic], in violation of Article 134, UCMJ, as follows:

[Appellant], U.S. Army, did, at or near Lawton, Oklahoma, between on or about 1 February 2012 and on or about 2 August 2012, knowingly and wrongfully possess child pornography, to wit: one or more computer images of a minor, or what appears to be a minor, engaging in sexually explicit conduct, and that said conduct was to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

During the providence inquiry, the military judge described the two clauses of the terminal element of Article 134, UCMJ offenses in the conjunctive, as they were charged. In appellant's own words, he admitted:

My conduct was prejudicial to good order and discipline. I possessed these images on my government computer, and I knew that was wrongful – or that it was wrong. These – or this essentially deprived the government of an asset, and the resulting investigation disrupted my mission. My conduct was also of a nature to bring discredit upon the armed forces. My actions were illegal, and I fell far below the standards expected of anyone, let alone an officer and Soldier.

Later, the following colloquy occurred between the military judge and appellant:

MJ: And tell me why your possession of that child pornography – why it was prejudicial to good order and discipline.

ACC: It was disobedient to orders, as stated in regulations and also in the [UCMJ], and also because it was a government computer.

The providence inquiry concluded with no additional inquiry into either clause of the terminal element.

## LAW AND DISCUSSION

“During a guilty plea inquiry the military judge is charged with determining whether there is an adequate basis in law and fact to support the plea before accepting it.” *United States v. Inabinette*, 66 M.J. 320, 321–22 (C.A.A.F. 2008) (citing *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991)). We review a military judge's decision to accept a plea for an abuse of discretion by determining whether the record as a whole shows a substantial basis in law or fact to question the plea. *Inabinette*, 66 M.J. at 322.

In this case, the providence inquiry does not adequately establish how appellant's conduct caused a “direct and palpable effect on good order and discipline.” *United States v. Erickson*, 61 M.J. 230, 232 (C.A.A.F. 2005). The investigation into appellant’s possession of child pornography is not a legitimate basis for accepting the plea because it does not demonstrate how the charged offense had an effect on good order and discipline. Additionally, the stipulation of fact does not provide an additional factual basis upon which to satisfy this requirement. *See United States v. Care*, 18 U.S.C.M.A. 535, 40 C.M.R. 247 (1969). Although it appears appellant’s misconduct took place while he was a company commander\* and it is possible that the loss of a “government asset” affected his mission, the evidence on the record before us was not developed as such. Additionally, it is unclear from the record whether appellant was referring to the “asset” as himself or the government laptop.

There is, however, a factual basis to support that appellant’s conduct is service discrediting. *See United States v. Phillips*, 70 M.J. 161, 166 (C.A.A.F. 2011). Consequently, we will dismiss the language “to the prejudice of good order and discipline in the armed forces” from The Specification of Additional Charge 1 [sic].

## CONCLUSION

The court affirms only so much of the finding of guilty of The Specification of Additional Charge 1 [sic] as finds that:

[Appellant], U.S. Army, did, at or near Lawton, Oklahoma, between on or about 1 February 2012 and on or about 2 August 2012, knowingly and wrongfully possess child pornography, to wit: one or more computer images of a minor, or what appears to be a minor, engaging in sexually

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\* Appellant’s Officer Record Brief (ORB) was admitted into evidence as Prosecution Exhibit 2. During the timeframe appellant wrongfully possessed child pornography, appellant’s duty title, as stated on his ORB, was “RCTG CO CDR.”

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explicit conduct, and that said conduct was of a nature to bring discredit upon the armed forces.

The remaining findings of guilty are AFFIRMED.

Reassessing the sentence on the basis of the errors noted, the entire record, and in accordance with the principals of *United States v. Winckelmann*, 73 M.J. 11, 15-16 (C.A.A.F. 2013), the court AFFIRMS the sentence.

Senior Judge TOZZI and Judge CELTNIIEKS concur.



FOR THE COURT:

A handwritten signature in black ink, which appears to read "Malcolm H. Squires, Jr.", is written over the printed name.

MALCOLM H. SQUIRES, JR.  
Clerk of Court