IN THE U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS
WASHINGTON NAVY YARD
WASHINGTON, D.C.

BEFORE

Charles Wm. DORMAN **C.A. PRICE** **E.B. STONE**

UNITED STATES

v.

Briant O. BATLE
Hospitalman (E-3), U.S. Navy

NMCCA 200401851 Decided 7 November 2005

Sentence adjudged 12 July 2004. Military Judge: B.W. MacKenzie. Review pursuant to Article 66(c), UCMJ, of General Court-Martial convened by Commander, Navy Region Northwest, Silverdale, WA.

LT ANTHONY S. YIM, JAGC, USNR, Appellate Defense Counsel
CDR HANS P. GRAFF, JAGC, USNR, Appellate Defense Counsel
Maj KEVIN C.HARRIS, USMC, Appellate Government Counsel
Maj ROBERT M. FUHRER, USMCR, Appellate Government Counsel

STONE, Judge:

The appellant was tried by a general court-martial before a military judge sitting alone. In accordance with his pleas, the appellant stands convicted of four specifications of carnal knowledge of a child, sodomy with a child, indecent acts upon a child, solicitation to commit carnal knowledge, receipt of child pornography, and two specifications of adultery, in violation of Articles 120, 125, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 920, 925, and 934. The appellant was sentenced to 66 months confinement, forfeiture of all pay and allowances, reduction to pay grade E-1, and a dishonorable discharge. The convening authority approved the sentence, but suspended confinement in excess of five years, as required by the pretrial agreement.

We have examined the record of trial, the single assignment of error, the Government's response and the appellant's reply. We conclude that the assignment of error has merit and will grant and order appropriate relief. As modified, we conclude that the findings and the sentence are correct in law and fact and that no

error materially prejudicial to the substantial rights of the appellant remains. Arts. 59(a) and 66(c), UCMJ.

The appellant asserts that the military judge erred in accepting a plea of guilty to the specification under Additional Charge 1, which alleges wrongful solicitation of a girl identified only as "Sarah" to commit carnal knowledge. Citing to *United States v. Higgins,* 40 M.J. 67, 68 (C.M.A. 1994), the appellant claims that his plea was improvident because there is no evidence in the record that Sarah understood the appellant's request to have sexual intercourse with him was either part of a criminal venture or wrongful. We agree that the plea is improvident. That charge and specification are dismissed.

The remaining findings are affirmed. Because of our action on the findings we will reassess the sentence in accordance with the principles of *United States v. Cook,* 48 M.J. 434, 438 (C.A.A.F. 1998).

The record reveals that the appellant was a serial child molester who, by his own admission, had sexual intercourse with five different girls all of whom were under 16 years of age. One of the three girls was his stepdaughter. The appellant also knowingly received child pornography and committed indecent acts with a female under the age of 16. Therefore, upon reassessment, we find that the sentence received by the appellant would not have been any less severe even if he had been found not guilty of the specification of Additional Charge 1. We further find that the sentence is appropriate for this offender and the offenses that have been affirmed by this court. *See United States v. Peoples*, 29 M.J. 426, 428 (C.M.A. 1990); *United States v. Sales*, 22 M.J. 305, 307 (C.M.A. 1986); *United States v. Suzuki*, 20 M.J. 248, 249 (C.M.A. 1985). Accordingly, we affirm the sentence as approved by the convening authority.

Chief Judge DORMAN and Senior Judge PRICE concur.

For the Court

R.H. TROIDL
Clerk of Court