

**IN THE UNITED STATES COAST GUARD
COURT OF CRIMINAL APPEALS**

UNITED STATES	)	10 October 2017
Appellee)	
	)	ASSIGNMENTS OF ERROR AND
	)	BRIEF ON BEHALF OF APPELLANT
)	
)	
v.	)	Dkt. 1454
	)	Case No. G 0356
	)	Panel 29
)	
)	
ANTHONY PICCININNO	)	Tried at Alameda, CA by a general court-martial
Yeoman First Class	)	convened by Commander, Eleventh Coast Guard
U. S. Coast Guard Reserve,	)	District, on 27 September 2016, 1 December
Appellant	)	2016, and 26 January 2017

**TO THE HONORABLE, THE JUDGES OF THE UNITED STATES
COAST GUARD COURT OF CRIMINAL APPEALS**

Statement of the Case

A military judge sitting as a general court-martial convened by Commander, Eleventh Coast Guard District, tried Appellant, Yeoman First Class (YN1) Anthony R. Piccininno, United States Coast Guard Reserve (USCGR), at Alameda, California on 27 September 2016, 1 December 2016, and 26 January 2017. Consistent with his pleas, the court-martial convicted YN1 Piccininno of one specification of possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934 (2012).

The military judge sentenced YN1 Piccininno to reduction to pay-grade E-1, 16 months of confinement, and a bad conduct discharge from the Coast Guard. (R. at 106-107.) The convening authority approved the sentence as adjudged. (Commander, Eleventh Coast Guard District, General Court-Martial Order 1-2016 (May 17, 2017) (hereinafter "Prom. Ord.)) With

the exception of the bad-conduct discharge, the convening authority ordered the sentence executed on 17 May 2017. *Id.* The convening authority also suspended execution of confinement in excess of 120 days for 34 months, at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action. *Id.* The Judge Advocate General of the Coast Guard referred the case to the Coast Guard Court of Criminal Appeals (CGCCA) for review under Article 66, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866 (2012) on 12 June 2017.

Statement of Facts

YN1 Piccininno reenlisted on 8 January 2011 for a period of eight years.¹ (P.E. 21) He was recalled from the reserves to serve on active duty continuously from 11 June 2012 through 30 September 2014 pursuant to 10 U.S.C. § 12301(d). (PE 1-4). Throughout this period of active duty YN1 Piccininno was assigned to Coast Guard District Eleven and Coast Guard Sector San Francisco. *Id.* On 5 July 2016, YN1 Piccininno was issued orders recalling him to active duty for the Preliminary Hearing in his case. (Preliminary Hearing Officer’s Exhibit 11). Those orders cited 10 U.S.C. § 12301(d) under “Orders Type” and stated that Member was recalled to active duty under 10 U.S.C. § 802 (d) under “Remarks/Comments/Additional instructions.” Additional facts in support of Appellant’s Assignments of Error are contained in his declaration, Appendix A.

Assignments of Error

I.

YN1 PICCININNO ASSERTS THAT THE COURT-MARTIAL LACKED JURISDICTION OVER HIM BECAUSE HE WAS RETAINED IN THE INDIVIDUAL READY RESERVE CONTRARY TO HIS INTENTION

¹ The form DD-4/1 states that he was enlisting into the U.S. Coast Guard, though it appears that the intent behind this document was that YN1 Piccininno was reenlisting the U.S. Coast Guard Reserve.

**AND BECAUSE THE ORDERS RECALLING HIM FOR PROSECUTION
CITED THE INCORRECT AUTHORITY FOLLOWING THE WORDS
“ORDERS TYPE.”²**

II.

**YN1 PICCININNO ASSERTS THAT HIS PLEA TO THE CHARGE OF
VIOLATING ARTICLE 134 FOR POSSESSING CHILD PORNOGRAPHY
WAS IMPROVIDENT BECAUSE THE IMAGES HE POSSESSED WERE
CHILD EROTICA AND NOT CHILD PORNOGRAPHY.³**

Request for Relief

YN1 Piccininno requests this Court dismiss the charge and its sole specification
with prejudice.

Conclusion

WHEREFORE, Appellant so prays.

DATE: 10 October 2017

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² Raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1981).

³ Raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1981).

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was delivered to the Court and opposing counsel via email on 10 October 2017.

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