

Case Summary
Office of the Judge Advocate General

DEFENDANT: AB Krebs
TYPE OF PROCEEDING: Defence Force Magistrate
DATE OF TRIAL: 15 February 2024
VENUE: HMAS *Stirling*, WA

Charges and plea

	Statement of Offence	Plea
Charge 1	DFDA, s. 61(3), and Crimes Act 1900 (ACT), s. 60(1) Act of indecency without consent	Guilty
Charge 2	DFDA, s. 61(3), Criminal Code 2002 (ACT), s. 44(1), and Crimes Act 1900 (ACT), s. 60(1) Attempt to commit Act of indecency without consent	Withdrawn
Alternative to Charge 2	DFDA, s. 25 Assaulting a Superior Officer	Withdrawn

Pre-Trial: Closed hearing and non-publication orders

Application made:	No
Determination:	While no orders were made under the DFDA, due to the nature of Charge 1, it is an offence to publish the details of the complainant under the Evidence (Miscellaneous) Provisions Act 1991 (ACT).

Trial: Facts and legal principles

Nil, as the case proceeded by way of a guilty plea.

Findings

	Finding
Charge 1	Guilty
Charge 2	No Finding Required
Alternative to Charge 2	No Finding Required

Sentencing: Facts and legal principles

The defendant was a trainee. Whilst intoxicated at licensed premises he indecently touched another trainee. He desisted when told to and the touching was momentary. The prosecution did not proceed with the original charge sheet as signed by the DMP and withdrew two charges.

The defendant was sentenced on the basis of a momentary touch which was not sexually motivated, but nevertheless indecent. It was not planned nor persistent. He apologised shortly after. In mitigation, it was said on his behalf he had no memory of the incident due to intoxication. He had prior unrelated DFDA convictions.

- *This summary is not intended to be a substitute for the reasons of the Service tribunal or to be used in any later consideration of the tribunal's reasons.*

Due to the serious nature of the touching involved only a period of actual detention could meet the sentencing aims of general deterrence and maintenance of service discipline.

Punishments and orders

Charge 1	To undergo detention for a period of 40 days.
Charge 2	Not Applicable
Alternative to Charge 2	Not Applicable

Outcome on automatic review

The Reviewing Authority's decision on automatic review was handed down on 14 March 2024.

	Conviction	Punishments / Orders
Charge 1	Upheld	Upheld
Charge 2	Not Applicable	Not Applicable
Alternative to Charge 2	Not Applicable	Not Applicable

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