

Case Summary
Office of the Judge Advocate General

DEFENDANT: SMN Emin
TYPE OF PROCEEDING: Defence Force Magistrate
DATE OF TRIAL: 24 April 2024
VENUE: HMAS *Stirling*, WA

Charges and plea

	Statement of Offence	Plea
Charge 1	DFDA, s. 61(3) and Crimes Act 1900 (ACT), s. 72C Non-consensual distribution of intimate images	Guilty
Charge 2	DFDA, s. 61(3) and Crimes Act 1900 (ACT), s. 72C Non-consensual distribution of intimate images	Guilty
Charge 3	DFDA, s. 61(3) and Crimes Act 1900 (ACT), s. 72C Non-consensual distribution of intimate images	Withdrawn

Pre-Trial: Closed hearing and non-publication orders

Application made:	Yes, by the Prosecution for a non-publication order in respect of the complainant's identifying particulars.
Determination:	The application was unopposed and was granted.

Trial: Facts and legal principles

Nil, as the case proceeded by way of guilty pleas.

Findings

	Finding
Charge 1	Guilty
Charge 2	Guilty
Charge 3	No Finding Required

Sentencing: Facts and legal principles

Between Jul and Sep 22, the defendant and complainant were engaged in a relationship. On 26 Sep 22, the defendant distributed an intimate image of the complainant from his mobile phone (Charge 1). On an unknown date in Sep 22, the defendant used his mobile phone to show another trainee an intimate image of the complainant (Charge 2). On 11 Oct 22, the defendant participated in a record of interview. In the interview the defendant told JMPU investigators that he had shown the other trainee a picture of the complainant. The defendant also admitted that the complainant did not provide her consent to distribute the imagery. Despite the objectively serious features of the defendant's behaviour, the DFM took into account a number of mitigating features including the very early pleas of guilty, his young age, unblemished conduct record, genuine contrition, otherwise good character, co-operation with service investigators and encouraging prospects for rehabilitation. In all of the circumstances, the DFM held that the minimum punishments necessary to satisfy the principles of general deterrence and maintenance of good order and discipline were concurrent terms of detention with a requirement to serve 40 days.

- *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.*

Punishments and orders

Charge 1	To undergo detention for a period of 90 days. Pursuant to DFDA s. 78 the Tribunal orders 50 days of the sentence of detention be suspended. The Tribunal orders that the sentences of detention imposed in connection with the First and Second Charges be served concurrently.
Charge 2	To undergo detention for a period of 40 days. The Tribunal orders that the sentences of detention imposed in connection with the First and Second Charges be served concurrently.
Charge 3	Not Applicable

Outcome on automatic review

The Reviewing Authority's decision on automatic review was handed down on 06 May 2024.

	Conviction	Punishments / Orders
Charge 1	Upheld	Upheld
Charge 2	Upheld	Upheld
Charge 3	Not Applicable	Not Applicable

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