

Case Summary
Office of the Judge Advocate General

DEFENDANT: CPL Smithers
TYPE OF PROCEEDING: Defence Force Magistrate
DATE OF TRIAL: 01 July 2024
VENUE: Court Martial Facility, Fyshwick, ACT

Charges and plea

	Statement of Offence	Plea
Charge 1	DFDA, s. 61(3) and Crimes Act 1900 (ACT), s. 61B(1) Intimate observations or capturing visual data, etc	Guilty
Charge 2	DFDA, s. 61(3) and Crimes Act 1900 (ACT), s. 72C Non-consensual distribution of intimate images	Guilty

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 complainants 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	Guilty

Sentencing: Facts and legal principles

The defendant pleaded guilty to two rolled up charges encompassing 6 acts of recording consensual sexual activity with five other members on separate occasions (charge 1), and ten incidents of sending imagery (still and video) of her having consensual sexual activity with seven members (two of whom consented to the recording) to her co accused.

The events took place from 2018 to 2021. At the start of the period the defendant was on a gap year and was very youthful. She remained a teenager for just over a year of the offending period. She was put up to the offending by her co accused who began a relationship with her when he was a 28 year old recruit instructor at Kapooka. He manipulated her into committing the offences (he is yet to be sentenced).

The defendant cooperated with investigators and was remorseful. The offending began six years ago and lasted for two years and nine months. Whilst the offending was a serious breach of trust, she was a youthful offender who had been subjected to manipulative control by someone who had

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been in position of power and authority over her for his sexual gratification. This significantly reduced her moral culpability.

The minimum sentence which could be imposed to meet the aims of general deterrence and maintenance of service discipline was reduction to the rank of private and detention for 6 months. Due to her age and significant mitigation the sentence of detention was suspended.

Punishments and orders

Charge 1	To be reduced to the rank of Private. To undergo detention for a period of 180 days. Pursuant to DFDA s. 78 the Tribunal orders 180 days of the sentence of detention be suspended.
Charge 2	To be reduced to the rank of Private. To undergo detention for a period of 180 days. Pursuant to DFDA s. 78 the Tribunal orders 180 days of the sentence of detention be suspended.

Outcome on automatic review

The Reviewing Authority's decision on automatic review was handed down on 22 July 2024.

	Conviction	Punishments / Orders
Charge 1	Upheld	Upheld
Charge 2	Upheld	Upheld

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