

Case Summary
Office of the Judge Advocate General

DEFENDANT: PO Winter

TYPE OF PROCEEDING: Defence Force Magistrate

DATE OF TRIAL: 15 May 2025

VENUE: Court Martial Facility, Fyshwick, ACT

Charges and plea

	Statement of Offence	Plea
Charge 1	DFDA, s. 61(3) and Criminal Code, s. 474.17(1) Using carriage service to cause offence	Not Guilty
Alternative to Charge 1	DFDA, s. 60(1) Prejudicial conduct	Guilty
Charge 2	DFDA, s. 60(1) Prejudicial conduct	Guilty
Charge 3	DFDA, s. 26(2) Using insubordinate language	Guilty

Pre-Trial: Closed hearing and non-publication orders

Application made:	No
Determination:	Not applicable

Trial: Facts and legal principles

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

Findings

	Finding
Charge 1	Not Applicable
Alternative to Charge 1	Guilty
Charge 2	Guilty
Charge 3	Guilty

Sentencing: Facts and legal principles

Pursuant to ss.142(3) of the DFDA, the Prosecuting Officer consented to the acceptance of the defendant's plea of guilty to the Alternative to Charge 1. Consequently, the matter proceeded as if the defendant had not been charged with the first offence (Original Charge 1).

On 19 Dec 20, the complainant received a number of salacious WhatsApp messages from the defendant. The complainant did not respond to any of these messages sent on this day (New Charge 1, Prejudicial Conduct). On 16 May 21, the defendant sent another WhatsApp message following on from the ones sent previously on 19 Dec 20. Again, the complainant did not reply (Charge 2). On 26 Mar 24, after the complainant had commissioned from the ranks, the defendant sent another WhatsApp message that contained insubordinate language (Charge 3) and the complainant reported the matters.

- *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.*

The Prosecuting Officer submitted that in light of the early pleas of guilty and other circumstances of this case, the punishments of imprisonment and dismissal were neither necessary or appropriate.

In mitigation of penalty, the Defending Officer also highlighted the defendant's remorse, otherwise good character, significant service history and co-operation with service investigators. Reference was also made to current medical treatment and an expectation that the defendant would most likely be separating from service on medical grounds later in 2025.

Despite the mitigating features, the DFM held that due to the nature of the communications, the rank disparity in relation to all charges and the particular role that the defendant occupied, the minimum sentence that would satisfy the principles of general deterrence and need to maintain good order and discipline in the ADF was a reduction in rank to Leading Seaman with a new seniority date as at the time of sentence on all three counts.

Punishments and orders

Charge 1	Not Applicable
Alternative to Charge 1	Reduction in rank to LS, seniority to date from 15 May 25
Charge 2	Reduction in rank to LS, seniority to date from 15 May 25
Charge 3	Reduction in rank to LS, seniority to date from 15 May 25

Outcome on automatic review

The Reviewing Authority's decision on automatic review was handed down on 28 May 2025.

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

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