UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman JOSHUA M. BRADLEY
United States Air Force

ACM S31559

17 March 2009

Sentence adjudged 17 April 2008 by SPCM convened at Kadena Air Base, Okinawa, Japan. Military Judge: Gregory O. Friedland.

Approved sentence: Bad-conduct discharge, confinement for 8 months, and reduction to E-1.

Appellate Counsel for the Appellant: Major Shannon A. Bennett and Major Brian M. Thompson.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Jeremy S. Weber, and Captain Michael T. Rakowski.

Before

FRANCIS, HEIMANN, and THOMPSON
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

Consistent with his pleas, the appellant was convicted of one specification of negligent damage to government property, two specifications of writing bad checks, and three specifications of dishonorable failure to pay a debt, in violation of Articles 108, 123a, and 134, UCMJ, 10 U.S.C. §§ 908, 923a, 934 respectively. A panel of officers sentenced the appellant to a bad-conduct discharge, confinement for nine months and reduction to E-1. The convening authority reduced the period of confinement to eight months consistent with a pretrial agreement, but otherwise approved the adjudged sentence.

On appeal, the appellant, citing *United States v. Tardif*, 57 M.J. 219 (C.A.A.F. 2002) and *United States v. Moreno*, 63 M.J. 129 (C.A.A.F. 2006), contends the delay in docketing this case before this Court was error and warrants some form of relief under *Tardif*. Specifically, the appellant asks this Court to not approve the reduction from E-2 to E-1.

Post-Trial Delay

The appellant was sentenced on 17 April 2008. Under standards prescribed by *Moreno,* the government is expected to complete the record of trial and have the convening authority take action within 120 days of the sentence announcement. They are also expected to ensure the record of trial is forwarded to this Court within 30 days of action for a total of 150 days. *Moreno*, 63 M.J. at 142. In the appellant's case, these two steps took 168 days and 40 days respectively for a total of 208 days. In assessing the impact of these post-trial delays, we consider not only the *Moreno* standards for determining a due process violation but also the authority Article 66(c), UCMJ, 10 U.S.C. § 866(c), and *Tardif* provide this Court in addressing post-trial delays.

We review de novo claims that an appellant has been denied the due process right to a speedy post-trial review and appeal. *See Moreno*, 63 M.J. at 135 (citing *United States v. Rodriguez*, 60 M.J. 239, 246 (C.A.A.F. 2004); *United States v. Cooper*, 58 M.J. 54, 58 (C.A.A.F. 2003)). In conducting this review, we follow our superior court's guidance in using the four factors set forth in *Barker v. Wingo*, 407 U.S. 514, 530 (1972): (1) the length of the delay; (2) the reasons for the delay; (3) the appellant's assertion of the right to timely review and appeal; and (4) prejudice. *Moreno*, 63 M.J. at 135 (citing *United States v. Jones*, 61 M.J. 80, 83 (C.A.A.F. 2005)).

In determining prejudice, this Court looks to three interests for prompt appeals: (1) prevention of oppressive incarceration pending appeal; (2) minimization of anxiety and concern of those convicted awaiting the outcome of their appeals; and (3) limitation of the possibility that a convicted person's grounds for appeal, and his or her defenses in case of reversal and retrial, might be impaired. *Id.* at 138-39.

In addition to a *Moreno* analysis, under *Tardif*, our superior court has held that Article 66(c), UCMJ, gives this Court the authority to grant sentence relief under Article 66(c), UCMJ, where there has been unreasonable post-trial delay. *Tardif*, 57 M.J. at 220. The exercise of this authority does not require a finding of prejudice. *Id.*; *United States v. Toohey*, 63 M.J. 353, 362 (C.A.A.F. 2006) Under these precedents the question of relief is "appropriateness in light of all circumstances, and no single predicate criteria of 'most extraordinary' should be erected to foreclose application of Article 66(c), UCMJ, consideration or relief." *Toohey*, 63 M.J. at 362.

For courts-martial completed after 11 June 2006, we apply a presumption of unreasonable delay when the convening authority's action is not completed within 120 days of the sentence and also in those cases when the record of trial is not docketed to this Court within 30 days of the convening authority's action. *Moreno*, 63 M.J. at 142. Once this due process analysis is triggered by a facially unreasonable delay, we analyze each factor and make a determination as to whether that factor favors the government or the appellant. *Id.* at 136. Because the delays in appellant's case are facially unreasonable, we examine the four factors set forth in *Barker v. Wingo*.

When we assume error, but are able to directly conclude that any error was harmless beyond a reasonable doubt, we do not need to engage in a separate analysis of each factor. *United States v. Allison*, 63 M.J. 365, 370-71 (C.A.A.F. 2006). This approach is appropriate in the appellant's case. Having considered the totality of the circumstances and the entire record, we conclude that any denial of the appellant's right to speedy post-trial review and appeal was harmless beyond a reasonable doubt and that no relief is warranted for either the due process violation or under Article 66(c), UCMJ. In doing so we find the appellant is not warranted relief under either *Moreno* or *Tardif*.

Conclusion

The approved findings and the sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. Article 66(c), UCMJ; *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

Judge THOMPSON did not participate.

OFFICIAL

STEVEN LUCAS, YA-02, DAF
Clerk of the Court