

**UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

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**UNITED STATES**

**v.**

**Staff Sergeant ROBERT J. CONE  
United States Air Force**

**ACM 34576**

**19 June 2002**

Sentence adjudged 19 January 2001 by GCM convened at Osan Air Base, Republic of Korea. Military Judge: John J. Powers.

Approved sentence: Bad-conduct discharge, confinement for 5 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Lieutenant Colonel Timothy W. Murphy, and Major Marc A. Jones.

Appellate Counsel for the United States: Colonel Anthony P. Dattilo, Lieutenant Colonel Lance B. Sigmon, and Major Martin J. Hindel.

Before

**YOUNG, BRESLIN, and HEAD**  
Appellate Military Judges

**OPINION OF THE COURT**

**YOUNG, Chief Judge:**

The appellant was charged with eight specifications of violating Article 123a, UCMJ, 10 U.S.C. § 923a, by making bad checks with the intent to defraud, and two specifications of violating Article 134, UCMJ, 10 U.S.C. § 934, by dishonorably failing to pay a debt and by making bad checks and thereafter dishonorably failing to maintain sufficient funds for their payment upon presentment. The appellant pled guilty to the two specifications charged under Article 134. He also pled guilty to violating Article 123a for some of the checks charged under that provision, and guilty to the lesser included offense under Article 134 to the remaining checks charged under Article 123a. The court members found him guilty under Article 123a of making some of the checks to which he

pled guilty under Article 134. The convening authority approved the sentence adjudged by the officer members: a bad-conduct discharge, confinement for 5 months, and reduction to E-1. The appellant argues there was undue delay in the post-trial processing of his case and asks that we set aside his bad-conduct discharge. We affirm.

## I. Facts

From the documents attached to the record of trial, we find the following chronology:

<b>Date</b>	<b>Action</b>	<b>Julian Date</b>	<b>Elapsed Days</b>
19 Jan	Appellant sentenced	19	0
6 Feb	Transcription of record completed	37	18
7 Mar	TC and DC examine record	66	47
26 Mar	Judge authenticates record	85	66
11 Apr	Staff judge advocate's recommendation (SJAR)	101	82
12 Apr	SJAR served on DC	102	83
23 Apr	SJAR served on the appellant	113	94
3 May	Defense submits clemency matters	123	104
3 May	Judge recommends Return to Duty Program	123	104
9 May	Addendum to SJAR	129	110
10 May	Appellant receives addendum to SJAR	130	111
11 May	DC receives addendum	131	112
23 May	DC responds to addendum	143	124
24 May	2d addendum to SJAR	144	125
1 Jun	3d addendum to SJAR	152	133
1 Jun	Action by the convening authority	152	133

## II. Discussion

To succeed on a claim of unreasonable post-trial delays in processing the record of a court-martial conviction, the appellant “must demonstrate some real harm or legal prejudice flowing from that delay.” *United States v. Jenkins*, 38 M.J. 287, 288 (C.M.A. 1993), *quoted in United States v. Santoro*, 46 M.J. 344, 347 (1997). The appellant claims the delay in processing his case, from the date counsel examined the record of trial (7 March) until the appellant was served with the staff judge advocate’s recommendation (SJAR) (23 April) was unreasonable and caused him to remain in confinement an additional 4 weeks. He asserts that if the staff judge advocate (SJA) had acted in a more timely manner, he could have been released from confinement (considering good time) on 18 May rather than 14 June.

The appellant argues that, the SJA should have completed the SJAR within 7 days of authentication and served on him by facsimile. According to the appellant’s

calculations, not disputed by the appellee, if the SJA had done this, the appellant would have been able to start working on his response on 14 March instead of 23 April. In fact, the military judge did not authenticate the record of trial until 26 March. Although there is no reason the SJA could not have started work on his SJAR prior to authentication, we do not believe a delay of 16 days from the date of authentication to completion of the SJAR is unreasonable, especially when the transcript is over 300 pages long, the pleas and findings were somewhat convoluted, and there are extensive exhibits attached to the record.

Furthermore, the delays in processing this case cannot be attributed entirely to the SJA. The appellant's trial defense counsel received the SJAR on 12 April, the day after it was written. Yet, the defense took the entire 10 days from the date the appellant received the SJAR (23 April) to respond. The defense took 12 days to respond to the new matter contained in the addendum to the SJAR and to provide the convening authority the military judge's recommendation that the appellant be entered into the Return to Duty Program. And, on 1 June the defense submitted more information on the program, necessitating an additional addendum. There is no unreasonable delay in this case.

The approved findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. Article 66(c), UCMJ; 10 U.S.C. § 866(c); *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

FELECIA M. BUTLER, TSgt, USAF  
Chief Court Administrator