UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman DANIEL V. HOLLAND
United States Air Force

ACM S31411

22 October 2008

Sentence adjudged 13 June 2007 by SPCM convened at Kadena Air Base, Okinawa, Japan. Military Judge: Steven A. Hatfield (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 180 days, and reduction to E-1.

Appellate Counsel for the Appellant: Major Shannon A. Bennett and Major Imelda L. Paredes.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Donna S. Rueppell, and Captain Ryan N. Hoback.

Before

WISE, BRAND, and HELGET
Appellate Military Judges

PER CURIAM:

In accordance with his pleas, the appellant was convicted of one specification of wrongful use of marijuana and one specification of stealing mail, in violation of Articles 112a and 134, UCMJ, 10 U.S.C. §§ 912a, 934. The approved sentence consists of a bad-conduct discharge, confinement for 180 days, and reduction to E-1.[1]

The issue on appeal is whether the appellant's due process right to timely post-trial processing was violated where this Court received the record of trial 78 days after the convening authority took action, or in the alternative, whether this Court should hold a

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[1] The convening authority waived the mandatory forfeitures.

portion of the appellant's sentence inappropriate under *United States v. Tardif*, 57 M.J. 219 (C.A.A.F. 2002) in light of the government's violation of the processing standards established in *United States v. Moreno*, 63 M.J. 129 (C.A.A.F. 2006). Finding no merit in the issue, we affirm.

Background

The appellant submitted matters for consideration in clemency on 27 July 2007. He asked to have his confinement reduced to three months or have the excess over three months suspended. On 6 August 2007, the convening authority approved the adjudged sentence with the exception of the six months confinement, instead approving 180 days confinement.[2] On 28 August 2007, prior to the record being forwarded, the appellant requested waiver of the mandatory forfeitures. Relying on Rule for Courts-Martial 1107(f)(2), on 1 October 2007, the convening authority withdrew the original Action, dated 6 August 2007, and issued a new Action, which granted the appellant's request. On 4 October 2007, the appellant asked the convening authority for release from confinement so he could be home with his mother during her hysterectomy surgery. On 15 October 2007, the staff judge advocate recommended against this action.[3]

The case was received by the Court on 18 December 2007, 78 days after the convening authority took action. Counting from the date of action, the record is 48 days late. Alternatively, counting from when it appears the convening authority quit considering favorable action for the appellant, it is 34 days late.[4]

In his post-trial affidavit, the appellant complains that because he does not have his DD Form 214, *Certificate of Release or Discharge from Active Duty*, he has been prejudiced.

Post-Trial Delay

"We review de novo claims that an appellant has been denied the due process right to a speedy post-trial review and appeal." *United States v. 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); *United States v. Toohey*, 60 M.J. 100, 102 (C.A.A.F. 2004)).

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[2] This was in accordance with the pretrial agreement.
[3] The appellant's scheduled release date was 9 November 2007.
[4] Either way the days are counted, the record was late according to the 30-day standard established in *United States v. Moreno*, 63 M.J. 129 (C.A.A.F. 2006).

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.

For courts-martial completed after 11 June 2006, we apply a presumption of unreasonable delay where the record of trial is not docketed to this court within 30 days of the convening authority's action. *Id.* 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 (citing *Rheuark v. Shaw*, 628 F.2d 297, 303 (5th Cir. 1980)). Because the delay is 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 (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.

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, 10 U.S.C. § 866(c); *United States v. Reed,* 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

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