UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman DUSTIN R. KOEHN
United States Air Force

ACM S31021 (f rev)

31 October 2008

Sentence adjudged 27 June 2005 by SPCM convened at Nellis Air Force Base, Nevada. Military Judge: William A. Kurlander (sitting alone).

Approved sentence: Confinement for 12 months, forfeiture of $500.00 pay per month for 12 months, and reduction to E-1.

Appellate Counsel for the Appellant: Lieutenant Colonel Mark R. Strickland, Major Shannon A. Bennett, Major Chadwick A. Conn, and Captain Kimberly A. Quedensley.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Lieutenant Colonel Robert V. Combs, Major Jeremy S. Weber, Captain Jamie L. Mendelson, and Captain G. Matt Osborn.

Before

HEIMANN, ZANOTTI, and PLACKE
Appellate Military Judges

UPON FURTHER REVIEW

PLACKE, Judge:

On 27 June 2005, a special court-martial composed of a military judge sitting alone at Nellis Air Force Base (AFB), Nevada, convicted the appellant in accordance with his pleas of one charge and one specification of wrongful use of marijuana, one specification of wrongful use of marijuana on divers occasions, one specification of wrongful use of ecstasy, one specification of wrongful use of cocaine, and one specification of wrongful use of methamphetamine, in violation of Article 112a, UCMJ,

10 U.S.C. § 912a. The military judge sentenced the appellant to confinement for 12 months, forfeiture of $750.00 pay per month for 12 months, and reduction to E-1. The convening authority approved only so much of the sentence as provided for confinement for 12 months, forfeiture of $500.00 pay per month for 12 months, and reduction to E-1.

The appellant's case is before this Court for the second time. Originally, the appellant's only assignment of error was that the case should be returned to the convening authority to ensure the intent of the convening authority was satisfied while still complying with the requirements of Article 57(a) and 58b, UCMJ, 10 U.S.C. §§ 857(a), 858b. On 2 March 2007, we agreed and returned the record of trial to The Judge Advocate General for remand to the convening authority for a new Action.

The Military Justice Division (JAJM) returned the record of trial to Nellis AFB on 7 April 2007. The next entry in the record is a 29 April 2008 memorandum from the Deputy Staff Judge Advocate that advised the convening authority of this Court's decision, the provisions of Articles 57(a) and 58b, UCMJ, and the convening authority's clemency options. On 27 May 2008, the convening authority signed a new Action, deferring $250.00 of the adjudged forfeitures and all of the mandatory forfeitures from 11 July 2005 until 4 November 2005. The record of trial was again docketed with this Court on 9 June 2008. Appellant now argues, in his only assignment of error, that his due process right to timely post-trial processing was violated by an unreasonable delay of 465 days between our initial decision and the return of the record of trial to this Court.

In this case, the 465-day delay between our initial decision and the return of the record of trial to this Court is facially unreasonable. Because the delay is facially unreasonable, we examine 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. *United States v. Moreno*, 63 M.J. 129, 135-36 (C.A.A.F. 2006). 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. *See 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 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.

Judge ZANOTTI did not participate.

OFFICIAL

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