UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class JUDE N.J. PARSONS
United States Air Force

ACM S32109

16 December 2013

Sentence adjudged 16 August 2012 by SPCM convened at Davis-Monthan Air Force Base, Arizona. Military Judge: Martin T. Mitchell (sitting alone).

Approved Sentence: Bad-conduct discharge, confinement for 4 months, forfeiture of $900.00 pay per month for 4 months, fine of $600.00, and reduction to E-1.

Appellate Counsel for the Appellant: Captain Christopher D. James and Dwight H. Sullivan, Esquire.

Appellate Counsel for the United States: Colonel Don M. Christensen and Gerald R. Bruce, Esquire.

Before

ROAN, MARKSTEINER, and WIEDIE
Appellate Military Judges

OPINION OF THE COURT

This opinion is subject to editorial correction before final release.

WIEDIE, Judge:

A special court-martial composed of a military judge sitting alone convicted the appellant, contrary to his pleas, of one specification of possession of Oxycodone and two specifications of forgery, in violation of Articles 112a and 123, UCMJ, 10 U.S.C. §§ 912a, 923. The adjudged sentence consisted of a bad-conduct discharge, confinement for 4 months, forfeiture of $900 pay per month for 4 months, a fine of $600, and reduction to E-1. The convening authority approved the sentence as adjudged.

On appeal, the appellant asserts that he is entitled to "modest but meaningful relief" pursuant to *United States v. Tardif*, 57 M.J. 219 (C.A.A.F. 2002), because the Government did not forward the record of trial for appellate review within the 30-day post-trial processing standard established by *United States v. Moreno*, 63 M.J. 129 (C.A.A.F. 2006).

Background

After a two-day litigated trial, the appellant's court-martial concluded on 16 August 2012. The special court-martial convening authority took action in the case on 22 October 2012. The appellant's case was not docketed with this Court until 28 November 2012, 37 days after action.

Post-Trial Processing Delay

In *Moreno*, our superior court established guidelines that trigger a presumption of unreasonable delay in certain circumstances, including where the record of trial is not docketed with the service court within 30 days of the convening authority's action and where appellate review is not completed within 18 months of that docketing. 63 M.J. at 142. Furthermore, Article 66(c), UCMJ, 10 U.S.C. § 866(c), empowers the service courts to grant sentence relief for excessive post-trial delay without the showing of actual prejudice required by Article 59(a), UCMJ, 10 U.S.C. § 859(a). *Tardif*, 57 M.J. at 224.

The appellant's record of trial was forwarded to this Court for appellate review 37 days after the convening authority took action. Recognizing he has suffered no prejudice, the appellant cites *Tardif* and argues that, because the delay is facially unreasonable under the *Moreno* standards, we should grant "modest but meaningful relief," in the form of setting aside the adjudged fine, to send a message to military justice practitioners that such delays are unacceptable.

Because these delays are 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." *Moreno*, 63 M.J. at 135 (citing *United States v. Jones*, 61 M.J. 80, 83 (C.A.A.F. 2005)). When we assume error but are able to directly conclude it 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 was harmless beyond a reasonable doubt. *See United States v. Harvey*, 64 M.J. 13, 24–25 (C.A.A.F. 2006). While we agree with the appellant that such

delays are unacceptable, we find that relief is not otherwise warranted. *Tardif*, 57 M.J. at 224.

Conclusion

The approved findings and sentence are correct in law and fact, and no error materially prejudicial to the substantial rights of the appellant occurred. Articles 59(a) and 66(c), UCMJ, 10 U.S.C. §§ 859(a), 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

FOR THE COURT

STEVEN LUCAS
Clerk of the Court