UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class TERRELL A. PEARSON
United States Air Force

ACM 37735

14 December 2012

Sentence adjudged 24 June 2010 by GCM convened at Shaw Air Force Base, South Carolina. Military Judge: Amy M. Bechtold (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 4 years, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for the Appellant: Lieutenant Colonel Gail E. Crawford; Major Michael S. Kerr; Captain Travis K. Ausland; and Captain Luke D. Wilson.

Appellate Counsel for the United States: Colonel Don M. Christensen; Lieutenant Colonel Linell A. Letendre; Captain Erika L. Sleger; and Gerald R. Bruce, Esquire.

Before

ROAN, MARKSTEINER, and HECKER
Appellate Military Judges

PER CURIAM:

In accordance with his pleas, the appellant was convicted at a general court-martial composed of a military judge of one specification of engaging in sexual intercourse with a child between 12 and 16 years of age and one specification of sodomy, in violation of Articles 120 and 125, UCMJ, 10 U.S.C. §§ 920, 925. The adjudged and approved sentence consisted of a bad-conduct discharge, confinement for 4 years, forfeiture of all pay and allowances, and reduction to the grade of E-1. One issue is raised for our consideration: whether the appellant is entitled to 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, 142 (C.A.A.F. 2006). Finding no error that materially prejudices a substantial right of the appellant, we affirm.[1]

Discussion

The appellant's record of trial was forwarded to this Court for appellate review 35 days after the convening authority took action. The appellant argues that, because the delay is facially unreasonable under the *Moreno* standards, we should grant relief essentially as a message that delays of this nature are unacceptable.[2] The appellant specifically refers the Court to *Tardif* for the proposition that we have the authority to grant relief even if we find no prejudice. Like the appellant, we too find *Moreno* violations unacceptable. However, after a full review of the record, it is obvious that the minor delay in returning the record of trial to this Court is harmless beyond a reasonable doubt. *See United States v. Allison*, 63 M.J. 365, 370 (C.A.A.F. 2006).

Conclusion

Having considered our responsibilities and the authority provided in *Tardif*, we find the appellant is not entitled to the relief requested and conclude the 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.

OFFICIAL

STEVEN LUCAS
Clerk of the Court

[1] Though not raised as an issue on appeal, we note that the overall delay of more than 540 days between the time of docketing and review by this Court is facially unreasonable. Having considered the totality of the circumstances and the entire record, we find that the appellate delay in this case was harmless beyond a reasonable doubt. *United States v. Moreno*, 63 M.J. 129, 135-66 (C.A.A.F. 2006) (reviewing claims of post-trial and appellate delay using the four-factor analysis in *Barker v. Wingo*, 407 U.S. 514 (1972)).

[2] Under *Moreno*, the record should have been docketed with this Court within 30 days of the convening authority's action.