

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

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**UNITED STATES**

**v.**

**Senior Airman STEPHEN J. STROUT  
United States Air Force**

**ACM 37161**

**10 December 2009**

Sentence adjudged 15 November 2007 by GCM convened at Lackland Air Force Base, Kelly Annex, Texas. Military Judge: William Burd.

Approved sentence: Bad-conduct discharge, hard labor without confinement for 21 days, forfeiture of \$433.00 pay per month for 1 month, and reduction to E-1.

Appellate Counsel for the Appellant: Major Shannon A. Bennett and Captain Phillip T. Korman.

Appellate Counsel for the United States: Colonel Douglas P. Cordova.

Before

**BRAND, JACKSON, and THOMPSON**  
Appellate Military Judges

This opinion is subject to editorial correction before final release.

**PER CURIAM:**

Though not raised as an issue on appeal, we note that the overall delay of 317 days between the time the case was docketed at the Air Force Court of Criminal Appeals and completion of review by 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. *See also 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. However, we also recognize that we have the power, under Article 66, U.C.M.J., to grant relief even in the absence of a showing of prejudice. *United States v. Tardif*, 57 M.J. 219, 224 (C.A.A.F. 2002). Such action is warranted here. We approve the findings and only so much of the sentence that calls for a bad-conduct discharge, 21 days hard labor without confinement, and a reduction to airman basic.

*Conclusion*

The approved findings and the sentence, as modified, are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. Article 66(c), U.C.M.J.; *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly the approved findings and the sentence, as modified, are

AFFIRMED.

OFFICIAL



A handwritten signature in blue ink, appearing to read "S. Lucas", is written over a horizontal line.

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