

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee

**BRIEF ON BEHALF OF
APPELLANT**

v.

Docket No. ARMY 20210092

Private (E-1)

KELVIN T. WINFIELD,

United States Army,

Appellant

Tried at Fort Bragg, North Carolina, on 20 October and 29 December 2020, and 2-3 March 2021, before a general court-martial appointed by the Commander, Headquarters, Fort Bragg, Colonel Fansu Ku, Military Judge, presiding.

TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Assignment of Error

**WHETHER THE DILATORY POST-TRIAL
PROCESSING OF THIS CASE WARRANTS RELIEF
WHERE THE CASE WAS NOT DOCKETED BY THE
ARMY COURT OF CRIMINAL APPEALS UNTIL 496
DAYS AFTER SENTENCING.**

Statement of the Case

On 3 March 2021, a military judge sitting as a general court-martial convicted appellant, Private Kelvin T. Winfield, contrary to his pleas, of two specifications of assault consummated by battery and two specifications of damage to non-military property, in violation of Articles 128 and 109 Uniform Code of Military Justice (UCMJ),

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respectively. (Statement of Trial Results; R. at 479).¹ The military judge sentenced appellant to be discharged from the service with a bad-conduct discharge. (R. at 602). Appellant was credited with twenty-seven days of pre-trial confinement credit. (Statement of Trial Results). On 18 March 2021, the convening authority took no action on the adjudged sentence and credited appellant with twenty-seven days of pre-trial confinement. (Action). The military judge signed the Judgment of the Court on 23 March 2021. (Judgment).

Statement of Facts

The military judge sentenced appellant on 3 March 2021 and entered judgment on 23 March 2021. (Judgment). On 5 March 2021, appellant's defense counsel notified the government he had no post-trial matters to submit in accordance with Rule for Court Martial (R.C.M.) 1106. (Post-Trial Matters). On 19 October 2021, the trial counsel certified the record. (Trial Counsel Certification). On 24 January 2022, the military judge certified the record. (Military Judge Certification). On 24 June 2022, a court

¹ Appellant was found not guilty of one specification of drunk on duty, in violation of Article 112 UCMJ, one specification of assault on a non-commissioned officer, in violation of Article 128 UCMJ, one specification of unlawful entry, in violation of Article 129 UCMJ, one specification of damage to military property, in violation of Article 108 UCMJ, one specification of fleeing apprehension, in violation of Article 87a UCMJ, one specification of violation of a lawful order, in violation of Article 92 UCMJ, one specification of attempted wrongful appropriation and one specification of attempted kidnapping, both in violation of Article 80, UCMJ.

reporter finally certified the transcript. (Court Reporter Certification). On 27 June 2022, the record was forwarded to this court for review. (Chronology). The case was docketed by this court on 11 July 2022. (Referral and Designation of Counsel).

The chief of military justice included a generic letter in the record describing the reasons for the delay, including the burdens COVID-19 placed on the installation, high caseload, and a lack of court reporter availability. (Post-Trial Processing Memorandum (27 June 2022)).

The transcript is 602 pages long. (R. at 602). Of those pages, 210 pages of the trial took place two or more months prior to sentencing. (R. at 210).

The defense counsel did not assert appellant's right for timely review and appeal.

WHETHER THE DILATORY POST-TRIAL PROCESSING OF THIS CASE WARRANTS RELIEF WHERE THE CASE WAS NOT DOCKETED BY THE ARMY COURT OF CRIMINAL APPEALS UNTIL 496 DAYS AFTER SENTENCING.

Standard of Review, Law, and Argument

“Claims of unreasonable post-trial delay are reviewed de novo.” *United States v. Cooper*, ARMY 20200614, 2022 CCA LEXIS 399, at *2 (Army Ct. Crim. App. 7 July 2022) ([summ. disp.](#)) (citing *United States v. Moreno*, 63 M.J. 129, 135 (C.A.A.F. 2006)). This court presumes a delay is unreasonable when more than 150 days elapsed between final adjournment and docketing. *United States v.*

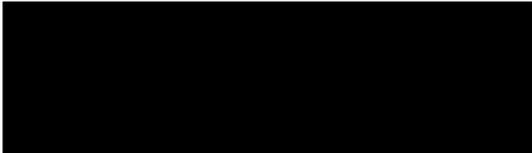
Brown, 81 M.J. 507, 510 (Army Ct. Crim. App. 2021) (consolidating 120-day and 30-day timelines from *Moreno*).

Where post-trial delay is found to be unreasonable, but not a due process violation, this court still has “authority under Article 66[(d)(1), UCMJ,] to grant relief for excessive post-trial delay without a showing of ‘actual prejudice’ within the meaning of Article 59(a).” *United States v. Tardif*, 57 M.J. 219, 224 (C.A.A.F. 2002) (citing *United States v. Collazo*, 53 M.J. 721, 727 (Army Ct. Crim. App. 2000)). This court looks to “all the facts and circumstances reflected in the record, including the unexplained and unreasonable post-trial delay,” in deciding what findings and sentence should be approved. *Id.* at 224.

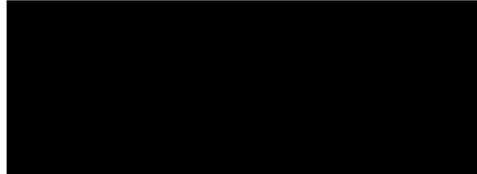
Following adjournment, the government took 496 days to docket appellant’s case at this court. This delay is presumptively unreasonable under *Brown* by more than three times over. The government’s attempted explanation merely cites to non-specific complaints of COVID-19 and personnel shortages. (Post-Trial Processing Memorandum (27 June 2022)). It offers no persuasive reasons for the delay. After sentencing, it appears appellant’s case mostly languished unattended for more than a year. Appellant still lacks resolution in his case though he was sentenced over eighteen months ago, at the time of filing. Even if there is no prejudice, this court should grant appellant relief for the government’s failure.

Conclusion

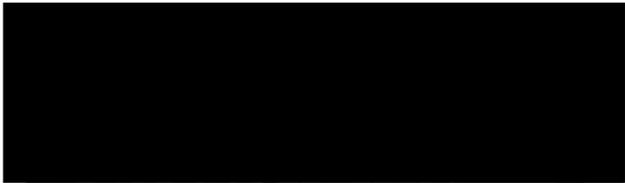
WHEREFORE, appellant respectfully requests this honorable court grant meaningful relief.



RACHEL P. GORDIENKO
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Certificate of Filing and Service

I certify that a copy of the foregoing was electronically submitted to the
Army Court and Government Appellate Division on 31 August 2022.



Rachel P. Gordienko
Major, Judge Advocate
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