

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee

**BRIEF ON BEHALF OF
APPELLANT**

v.

Docket No. ARMY 20220147

Private (E2)

Brandon B. Anthony

United States Army

Appellant

Tried at Joint Base Elmendorf-
Richardson/Fort Wainwright, Alaska,
before a general court-martial
appointed by the Commander, United
States Army Alaska, Colonel Scott A.
Oravec Military Judge, presiding.

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

Assignment of Error¹

**WHETHER THE DELAYED POST-TRIAL
PROCESSING OF THIS CASE MERITS RELIEF
WHERE THE CASE WAS NOT REFERRED TO
THE ARMY COURT OF CRIMINAL APPEALS
UNTIL 376 DAYS AFTER SENTENCING.**

¹ Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), appellant respectfully requests this court consider the information provided in the Appendix.

Statement of the Case

On 25 March 2022, a military judge, sitting as a general court-martial, convicted appellant, pursuant to his pleas, of one specification of sexual assault, in violation of Article 120, Uniform Code of Military Justice, 10 U.S.C. § 920 [UCMJ]. (Statement of Trial Results). The military judge sentenced appellant to reduction to Private (E1), thirty-eight months confinement and a dishonorable discharge. (Statement of Trial Results). On 12 April 2022, the convening authority took no action. (Convening Authority Action). On 24 March 2023, the military judge entered judgment. (Judgment of the Court).

Statement of Facts

Appellant was sentenced on 25 March 2022. (Statement of Trial Results). On 4 April 2022, trial defense counsel submitted a request to defer the adjudged reduction in rank until entry of judgment and disapprove it at action, as well as defer automatic forfeitures and automatic reduction in rank until entry of judgment. (Request to Defer Adjudged Forfeitures).

More than a year later, on 30 March 2023, the Chief of Military Justice signed the precertification review. (Trial Counsel Authentication and Certification). On 10 February 2023, the military judge authenticated the record. (Military Judge Authentication and Certification). The record of trial was not received and docketed by this Court until 5 April 2023, 376 days after sentencing.

To explain the post-trial processing in this case, the Chief of Military Justice included a memorandum for record dated 30 March 2023. (Post-Trial Processing Timeline in the General Court-Martial Case of United States v. PV2 Brandon B. Anthony). Within this memorandum for record, the chief of justice explained, “The 11th Airborne Division has a total of two assigned court reporters and one post-trial paralegal. The 11th Airborne conducted 14 courts-martial after appellant’s case.” (Post-Trial Processing Timeline in the General Court-Martial Case of United States v. PV2 Brandon B. Anthony).

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Standard of Review

Allegations of unreasonable post-trial delay are reviewed *de novo*. *United States v. Moreno*, 63 M.J. 129, 135 (C.A.A.F. 2006); *United States v. Arriaga*, 70 M.J. 51, 55 (C.A.A.F. 2011); *United States v. Anderson*, 82 M.J. 82, 85 (C.A.A.F. 2022).

Law

Servicemembers are entitled to timely post-trial review of their court-martial convictions. *Moreno*, 63 M.J. at 135. Appellate courts must determine whether any post-trial delay is facially unreasonable. *Id.* at 136.

Article 66(d)(2) provides the court the authority and discretion to “provide appropriate relief when an appellant demonstrates...excessive delay in the processing of the court-martial after the judgement was entered into the record.”

United States v. Winfield, ARMY 20210092 (Army Ct. Crim. App. 2023)

([opinion](#)). Due to recent changes to Article 66, this court recently overruled its holding in *United States v. Brown*, 81 M.J. 507 (Army. Ct. Crim. App. 2021), that post-trial delay greater than 150-days is presumptively unreasonable. *Id.* In lieu of the *Brown* principles, the court now “will scrutinize even more closely the unit-level explanations for post-trial processing delays between final adjournment and appellate docketing, including those less than 150 days.” *Id.*

In *Winfield*, this court again emphasized that the reasoning provided by jurisdictions in explaining delays will be scrutinized. *Id.* When explanations are provided to explain dilatory post-trial processing, this court reviews the totality of the circumstances to evaluate the sufficiency of those explanations. *United States v. Bauerbach*, 55 M.J. 501 (Army Ct. Crim. App. 2001). “Personnel and administrative issues...are not legitimate reasons justifying otherwise unreasonable post trial delay.” *Arriaga*, 70 M.J. at 56.

Acceptable explanations may include “excessive defense delays in the submission of R.C.M. 1105 matters, post-trial absence or mental illness or the accused, exceptionally heavy military justice post-trial workload, or unavoidable

delays as a result of operational deployments.” *Id.* at 507. Routine court reporter problems are not an acceptable explanation. *Id.* (citing *United States v. Clevidence*, 14 M.J. at 19 (C.M.A. 1982)).

Argument

Under Article 66(d), where post-trial delay is the only barrier to a timely conclusion of the appellate process, and that conclusion is needlessly delayed, this court should consider the circumstances and ultimately find they do not justify the delay. *United States v. Tardif*, 57 M.J. 219, 225 (C.A.A.F. 2002). “All practitioners, especially staff judge advocates, must ensure that the rights of the accused are not compromised, and that the interests of the government are protected.” *United States v. Mack*, ARMY 20120247, 2013 CCA LEXIS 1016, slip op. at 7 (Army Ct. Crim. App. 9 Dec. 2013) (summ. disp.) (Pede, C.J., concurring)). This case is not unique – there is no justifiable reason for the government to spend 376 days compiling a guilty plea case. While appellant was sentenced to thirty-eight months confinement, he is no less entitled to timely post-trial processing than any other appellant.

The government provided no adequate reasons to explain the delay. They explain staffing issues – two assigned court reporters and one post-trial paralegal, and the number of cases they conducted – fourteen. (Post-Trial Processing Timeline in the General Court-Martial Case of *United States v. PV2 Brandon B.*

Anthony). The government did not even bother arguing that this constituted a staffing shortage explaining the delay. Rather the memorandum from the Chief of Justice leaves that to be inferred. Simply put, the government is not even putting in the effort to try to justify the delay. At best this is a routine court reporter problem, which was found to be an unacceptable reason for delay in *Clevidence*, 14 M.J. at 19.

In its *Winfield* decision, this court held that pursuant to the new Article 66(d)(2), only *appropriate* relief will be provided in cases where it can reasonably be provided. In that case, this court declined to provide relief for the clear post-trial delay because that appellant was not sentenced to confinement and based on the circumstances, the court found it inappropriate to set aside appellant's bad-conduct discharge.

The court does not face the same dilemma here – based on his plea agreement, appellant was sentenced to thirty-eight months confinement. The minimum amount of confinement appellant faced was twenty-four months, and the maximum was forty-eight months. (Statement of Trial Results). In agreeing to the sentence limitations, the government conceded any sentence between two and four years would meet the goals of sentencing. Where appellant's sentence would still fall within the parameters of the plea agreement, the government cannot argue that

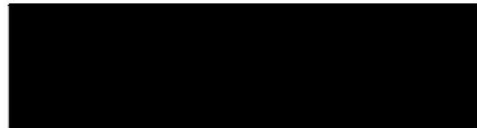
any reasonable relief for excessive delay would somehow result in a less effective or appropriate sentence.

Conclusion

Wherefore, in light of the dilatory post-trial processing, appellant respectfully requests this court reassess his sentence.



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APPENDIX

Appendix: Matters Submitted Pursuant to *United States v. Grostefon*

Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), the Appellant, through Appellate defense counsel, personally requests that this court consider the following matters:

1. Appellant has required ACL surgery since January 2023. He never received notice of when his surgery would take place. On Tuesday 11 July, appellant was informed he was going to be taken for his surgery. However, because he was never notified in advance that he could not eat on the day of his surgery the surgery was canceled. Appellant was threatened with a disciplinary report for failing to comply with the requirement not to eat on the day of surgery – despite never being notified when his surgery would take place. The disciplinary report could have impacted appellant’s release date. To date, appellant has never received his ACL surgery and remains in pain. The court should award him sentence credit.

2. Appellant requested waiver of the forfeitures in his case. This was denied by the convening authority. Appellant was the primary source of income supporting his mother – who is suffering from breast cancer and his father who cannot work as

well as his school age brothers. Appellant requests this court reevaluate his sentence in light of this hardship and remit his forfeitures.

3. After his conviction appellant provided a power of attorney for [REDACTED] [REDACTED] – a member of his unit, to hold his wallet and brand new I-Phone

13. The unit escort, [REDACTED], stole his phone and told him he did not care about his power of attorney. The member of his unit never received his wallet or cell phone and [REDACTED] was separated from the Army. This left appellant with no ability to recover his wallet or cell phone. This court should award appellant sentence credit.

4. Appellant's trial defense attorney has not contacted appellant in the year since his conviction and sentencing despite his requests to speak with her. Appellant wanted his attorney to assist him in tracking down the cell phone before it was too late. Because appellant was denied the assistance of counsel in this matter, he should receive sentence credit.

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was electronically submitted to Army
Court and Government Appellate Division on August 31, 2023.



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