

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES,

Appellee

v.

Specialist (E-4)

DELCARLO D. MCCULLOUGH,

United States Army,

Appellant

**MOTION TO ATTACH
GOVERNMENT APPELLATE
EXHIBIT 1**

Docket No. ARMY 20220376

Tried at Joint Base Lewis-McChord,
Washington, on 22 July 2022, before a
special court-martial convened by
Commander, 7th Infantry Division,
Lieutenant Colonel Robert E.
Murdough, military judge, presiding.

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

COMES NOW, the undersigned appellate government counsel, pursuant to
Rule 23.3 of this honorable court's Rules of Appellate Procedure, and moves to
attach the following Government Appellate Exhibit 1 to the Record of Trial (ROT).

On 17 August 2023, appellant filed his brief with this court alleging
unreasonable post-trial delay, challenging the unit's lack of "memorialization of
issues" in explaining the delay. (Appellant's Br. 7).

On 27 April 2023, this court issued its opinion in *United States v. Winfield*,
83 M.J. 662 (Army Ct. Crim. App. 27 Apr. 2023). In abandoning the bright-line
presumption of unreasonable post-trial delay in any case exceeding 150 days from
adjournment to appellate docketing, *see United States v. Brown*, 81 M.J. 507, 510
(Army Ct. Crim. App. 2021), this court announced it "will scrutinize even more

closely the unit-level explanations for post-trial processing delays” *Winfield*, 83 M.J. at 665. The court acknowledged The Judge Advocate General’s Policy Memorandum 22-08, “which blends a first-in, first-out procedure,” in its opinion. *Id.* at 664 n.2; Policy Memorandum 22-08, Office of the Judge Advocate General, Subject: Court Reporter Regionalization (1 March 2022) [TJAG Memo 22-08].

On 17 November 2023, the 7th Infantry Division’s Chief of Military Justice (CoJ) submitted to appellate government counsel a memorandum for record documenting the office’s coordination efforts under the court reporter regionalization program to outsource appellant’s transcription. Memorandum from Major [REDACTED], Subject: Explanation of Post-Trial Delay Concerning *U.S. v. SPC Delcarlo D. McCullough* (17 Nov. 2023) [CoJ MFR]. This memorandum documents the efforts the 7th Infantry Division’s Military Justice office undertook to produce a transcript and the delays caused by backlogged transcripts and abated court-martial proceedings. Specifically, since the office was operating under a first-in, first-out rule, the office was forced to outsource the transcription of appellant’s court-martial since there were nineteen other, earlier courts-martial pending transcription. (CoJ MFR). Once the transcript was completed, there were additional delays due to two previously abated courts-martial proceedings that were also pending precertification, authentication, and certification. (CoJ MFR). However, the office acknowledged “both the need for timely post-trial processing

of all cases” and promised to “endeavor in all cases to ensure post-trial processing takes no longer than reasonably necessary to ensure a complete and accurate record of trial.” (CoJ MFR).

Government Appellate Exhibit 1 is the memorandum for record from Major [REDACTED], Chief of Justice, 7th Infantry Division, Joint Base-Lewis McChord, Washington, dated 17 November 2023. Appellee now moves to attach that this exhibit to appellant’s ROT.

WHEREFORE, the United States prays this honorable court grant the instant motion.



PANEL NO. 3

MOTION TO ATTACH
GOVERNMENT APPELLATE
EXHIBIT 1.

LISA LIMB
CPT, JA
Appellate Attorney
Government Appellate Division

GRANTED: _____

DENIED: _____

DATE: _____

Government Appellate Exhibit

1



DEPARTMENT OF THE ARMY
HEADQUARTERS, 7TH INFANTRY DIVISION
BOX 339500 MAIL STOP 59
JOINT BASE LEWIS-MCCHORD, WA - 98433-9500

AFZC-SJA-MJ

17 November 2023

MEMORANDUM FOR RECORD

SUBJECT: Explanation of Post-Trial Delay Concerning U.S. v. SPC Delcarlo D. McCullough

1. The court-martial of U.S. v. SPC Delcarlo D. McCullough was convened on 22 June 2022. The sentence was announced on 22 June 2022 and the 1106 matters were submitted on 3 August 2022. The Convening Authority took action on 18 August 2022, and the Military Judge entered judgment on 25 August 2022.

2. The 150-day post-trial clock ended on 19 December 2022. On 18 October 2022, the transcript was outsourced for transcription to Fort Campbell, Kentucky. At the time of adjournment, the Joint Base Lewis-McChord court reporter office had 19 courts-martial pending transcription with an adjournment date prior to U.S. v. McCullough. Operating under the first-in, first-out rule, transcription began 88 days after adjournment.

3. Due to the high volume of hearings and transcription, the 6 hours and 33 minutes of audio in this case were outsourced utilizing the court reporter regionalization program. The transcript was completed in 56 days and returned on 13 December 2022. The Record of Trial was sent for trial counsel errata on 14 December 2022 and sent for precertification on 23 February 2023. The post-trial delay during this timeframe is attributed to adding the two previous abated courts-martial proceedings that were also pending precertification, authentication, and certification. The case was sent to the military judge on 1 March 2023. The Record of Trial was completed and certified by a court reporter on 8 March 2023.

4. This office acknowledges both the need for timely post-trial processing of all cases and will endeavor in all cases to ensure post-trial processing takes no longer than reasonably necessary to ensure a complete and accurate record of trial.

5. The point of contact for this memorandum is the undersigned at [REDACTED] or [REDACTED].

[REDACTED]
MAJ, JA
Chief, Military Justice

CERTIFICATE OF SERVICE U.S. v. MCCULLOUGH (20220376)

I certify that a copy of the foregoing was sent via electronic submission to
the Defense Appellate Division at [REDACTED]

[REDACTED] on this 26th day of November 2023.

[REDACTED]
Senior Paralegal Specialist
Government Appellate Division
9275 Gunston Road
Fort Belvoir, VA 22060-5546
[REDACTED]
[REDACTED]