

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee

**BRIEF ON BEHALF OF
APPELLANT**

v.

Docket No. ARMY 20230223

SGT (E-5)

DAYTRON ABDULLAH,

United States Army,

Appellant

Tried at Fort Carson, Colorado, on 20 April 2023, before a special court-martial appointed by the Commander, Headquarters, Fort Carson, Colonel Jacqueline L. Emanuel, 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 164 DAYS AFTER
SENTENCING.**

Statement of the Case

On 20 April 2023, a military judge sitting as a special court-martial convicted appellant, Sergeant Daytron Abdullah, in accordance with his pleas, of one specification of desertion, one specification of absent without leave, one specification of disobeying a superior commissioned officer, and one specification of wrongfully using marijuana in violation of Articles 85, 86, 90, 112a Uniform Code of Military Justice, 10 U.S.C. §§ 885, 886, 890, 912a [UCMJ]. (Charge

Sheet). The military judge sentenced appellant to reduction to E-1, a total of ninety days of confinement, and a bad conduct discharge. (R. at 63-64). The military judge also awarded appellant with fifty-one days of pre-trial confinement credit against the appellant's term of confinement.¹ (R. at 65; Statement of Trial Results).

On 13 July 2023, the convening authority took no action on the findings and sentence. (Action). On 8 September 2023, the military judge entered judgment. (Entry of Judgment). On 30 September 2023, this court docketed appellant's case. (Referral).

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 164 DAYS AFTER SENTENCING.

Facts Relevant to Assignment of Error

The military judge sentenced appellant on 20 April 2023. Eleven days later, appellant submitted post-trial matters.² (Post-Trial Matters). The Convening

¹ The Entry of Judgment (EOJ) dated 8 September 2023 should be amended to reflect as such because the military judge's determination and ruling affects the adjudged sentence to confinement. Additionally, the Charge Sheet should be amended to reflect the date when appellant was released from pretrial confinement.

² The Post-Trial Processing Timeline Memo states, "5 May 22 – Received R.C.M. 1106 submission from Defense." The memorandum was submitted on 1 May 2023. (Post-Trial Matters).

Authority's Action was not signed until 13 July 2023 and was not forwarded to the military judge until 3 August 2023. On 8 September 2023, the military judge entered judgment, 130 days after defense counsel submitted post-trial matters. (Entry of Judgment).

On 18 September 2023, the trial counsel pre-certified the record. (Trial Counsel Certification). On 22 September 2023, the military judge authenticated the record. (Military Judge Authentication). On 27 September 2023, a court reporter certified the transcript. (Court Reporter Certification). On 30 September 2023, this court docketed the case. (Referral). The transcript is only 100 pages long. (R. at 100). It is unclear from the record whether trial defense counsel asserted appellant's right for timely review and appeal.

The Staff Judge Advocate (SJA) submitted a memorandum stating, "The Post-Trial section received a new Staff Sergeant in April 2023. Between the months of April and August 2023, the civilian post-trial paralegal was tasked to train the new NCO within post-trial matters. Both Post-Trial team members are dually slotted in Magistrate Court and General Crimes sections within the OSJA. All the above may have hindered the processing time for US v. Abdullah while balancing daily tasks within the other sections." (Post-Trial Processing Timeline Letter). The memo also indicated, "There was an increase in court-martials

between the months of May through August. The post-trial team worked diligently to meet all post-trial requirements for pending Courts-Martial as well as those that were back logged.” (Post-Trial Processing Timeline).

Standard of Review and Law

“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)). A convicted soldier’s right to Due Process includes a timely review and appeal of his conviction. *United States v. Toohey*, 60 M.J. 100, 101 (C.A.A.F. 2004). Even without specific prejudice, this court can still grant relief in cases where there is unreasonable and unexplained post-trial delay. *United States v. Toohey II*, 63 M.J. 353, 362 (C.A.A.F. 2006).

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)). In deciding what findings and sentence should be approved, this court looks to “all the facts and circumstances reflected in the record, including the

unexplained and unreasonable post-trial delay.” *Id.* at 224. “Dilatory post-trial processing, without an acceptable explanation, is a denial of fundamental military justice, not a question of clemency.” *United States v. Ponder*, ARMY 20180515, 2020 CCA LEXIS 38, at *3 (Army Ct. Crim. App 10 Feb. 2020) ([summ. disp.](#)) (quoting *United States v. Bauerbach*, 55 M.J. 501, 507 (Army Ct. Crim. App. 2001)) (granting relief for excessive post-trial delay in light of government’s failure to provide adequate reasons).

Article 66(d)(2), UCMJ, authorizes courts of criminal appeals to “provide appropriate relief if the accused demonstrates error or excessive delay in the processing of the court-martial after the judgment was entered into the record” Although the court has overruled their previous 150-day limit of presumptive unreasonableness, it will find excessive delay “based on an examination of all relevant circumstances” under Article 66(d)(2). *United States v. Winfield*, No. ARMY 20210092, 2023 CCA LEXIS 189, at *6 (Army Ct. Crim. App. Apr. 27, 2023) ([mem. op.](#)). See also *United States v. Sepulveda*, No. ARMY 20220241, 223 CCA Lexis 223 (Army Ct. Crim. App. May 5, 2023) (summ. disp.); *United States v. Morris*, No. ARMY 20210624, 2023 CCA Lexis 197 (Army Ct. App. May 8, 2023) (petition denied by *United States v. Morris*, No. 23-0173/AR, 2023 CAAF LEXIS 409, at *1 (C.A.A.F. June 20, 2023)).

Argument

Following adjournment, the government took 164 days to docket appellant's case at this court. While appellant submitted his matters pursuant to R.C.M. 1106 on 1 May 2023, the transcript was not certified until 27 September 2023, nearly five months later. (Court Reporter Certification). The reason given by the government, that there were only two paralegals in the post-trial section, a civilian and a staff sergeant new to the section, is not reasonable explanation for the delay. (Post-Trial Processing Timeline Letter). Thus, appellant is entitled to a meaningful relief that also addresses the public's perception of the integrity of the military justice system.

The courts in *Morris* and *Winfield* could not identify appropriate relief, despite finding excessive delay. Here, appellant was sentenced to ninety days confinement, thus appropriate relief is readily available. Therefore, appellant asks this court to grant at least fifteen days of sentence reduction to remedy for the unreasonable delay.

Conclusion

For the foregoing reasons, this court should grant appropriate relief for the post-trial delay.³



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³ Since the convening authority declined to take any action on the adjudged sentence to confinement, which he had the authority to do under RCM 1109(c)(5)(A), appellant requests that any affirmed sentence also include the fifty-one days of pretrial confinement credit the military judge awarded appellant. (R. at 65; Statement of Trial Results as Incorporated into the Entry of Judgement).

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was electronically submitted to Army Court and Government Appellate Division on December 29, 2023.



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