

**IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS**

UNITED STATES,  
Appellee

**BRIEF ON BEHALF OF  
APPELLEE**

v.

Docket No. ARMY 20230223

Sergeant (E-5)  
**DAYTRON ABDULLAH,**  
United States Army,  
Appellant

Tried at Fort Carson, Colorado, on 20  
April 2023, before a special court-  
martial convened 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<sup>1</sup> AFTER  
SENTENCING.**

**Statement of the Case**

On 20 April 2023, a military judge sitting as a special-court martial  
convicted appellant, pursuant to his pleas, of one specification each of desertion,  
absence without leave, disobeying a superior commissioned officer, and wrongful

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<sup>1</sup> Appellee respectfully submits that from 20 April to 30 September 2023 amounts  
to 163 days, vice 164 days as appellant contends.

use of marijuana, in violation of Articles 85, 86, 90, and 112a, Uniform Code of Military Justice, 10 U.S.C. §§ 885, 886, 890, and 912a [UCMJ].<sup>2</sup> (R. at 63–64; Statement of Trial Results [STR]). The military judge sentenced appellant to be reduced to the grade of E-1, confined for a total of ninety days,<sup>3</sup> and discharged from the service with a bad-conduct discharge. (R. at 99–100; STR; App. Ex. IV). On 3 August 2023, the convening authority disapproved appellant’s requests for deferment of reduction in grade, deferment of automatic forfeitures, and waiver of automatic forfeitures, and took no other action on the findings or sentence. (Action). On 8 September 2023, the military judge entered judgment. (Judgment). Appellant’s case was docketed with this court on 30 September 2023. (Referral and Designation of Counsel).

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<sup>2</sup> In exchange for appellant’s pleas, the convening authority agreed to direct the trial counsel to dismiss one specification each of wrongful use of amphetamines, wrongful use of methamphetamines, and wrongful possession of marijuana, in violation of Article 112a, UCMJ. (App. Ex. I, p. 4; R. at 63; STR).

<sup>3</sup> The military judge sentenced appellant to the minimum term of confinement permitted under his plea agreement, segmenting the confinement as follows:

<b>Charge / Specification</b>	<b>Sentence</b>	<b>To be served...</b>
Charge I, The Specification	51 days	Consecutively
Charge II, The Specification	6 days	Consecutively
Charge III, The Specification	22 days	Consecutively
Charge IV, Specification 1	11 days	Consecutively
<b>Total</b>	<b>90 days</b>	

(App. Ex. I, p. 4; App. Ex. IV; R. at 58, 99–100; STR). Appellant was further credited with 51 days of pretrial confinement credit. (Charge Sheet; R. at 65–66).

## Statement of Facts

### **A. While serving on Rear Detachment as his unit was deployed, appellant unilaterally decided he was “done” with the Army.**

On 21 October 2022, appellant was apprehended for driving under the influence of alcohol with a breath alcohol concentration of 0.133. (Pros. Ex. 1). For this offense, appellant received a General Officer Memorandum of Reprimand, which was filed in his Army Military Human Resources Record. (Pros Ex. 4).

Less than a month later, on 15 November 2022, with his unit deployed to Eastern Europe, appellant provided a urine sample for a 100% unit urinalysis. (Pros Ex. 1; R. at 18–19). Appellant’s urine would later test positive for tetrahydrocannabinol (THC, the active ingredient in marijuana), dextroamphetamine, and dextromethamphetamine. (Pros. Ex. 1). Knowing that he had used narcotics prior to the urinalysis and that his urine would test positive accordingly, appellant left his unit that night or the following morning and texted a supervisor his intentions: “After yesterday I will no longer be coming in formation none of that. I’m done . . . Do what y’all gotta do, I’m done.” (Pros. Ex. 1; R. at 23). Appellant returned to military control, on his own volition, on 5 January 2023. (R. at 25).

The following day, appellant’s troop commander ordered him not to leave the limits of Fort Carson or consume alcohol. (Pros. Ex. 1). Appellant failed to report for duty on 19 January 2023 and when queried by his first sergeant,

appellant lied and said he was at a friend's house on post. (Pros. Ex. 1). Roughly an hour later, appellant was stopped by the military police at one of the Fort Carson gates for driving an unregistered vehicle with expired license plates, no valid driver's license, and no proof of insurance. (Pros. Ex. 1).

Approximately two weeks later, on 2 February 2023, appellant again failed to report for duty and appellant's first sergeant went to appellant's barracks room. (Pros. Ex. 1). The emanating odor of marijuana led to a probable cause room search, yielding alcohol and a hand-rolled cigarette that presumptively tested positive for marijuana. (Pros Ex. 1).

On 22 February 2023 appellant again failed to report for duty, going instead to Texas, where he remained absent without leave until 27 February 2023. (Pros Ex. 1; R. at 29). The next day, marijuana was again found in appellant's room. (Pros. Ex. 1). Appellant's unit assigned escorts to watch him, which he attempted to flee by running through his unit's operations facility and scaling a motor pool fence. (Pros. Ex. 1). Appellant was apprehended shortly thereafter. (Pros. Ex. 1).

## **B. Post-trial processing.**

Appellant's court-martial adjourned on 20 April 2023. (R. at 100). Appellant submitted post-trial matters on 1 May 2023. (Request to Waive Rank Reduction and Automatic Forfeitures). The trial counsel completed errata on 8 June 2023. (TC Errata). On 13 July 2023, the convening authority acted, which

was forwarded to the military judge on 3 August 2023. (Action). On 8 September 2023, the military judge entered judgment. (Judgment). On 18 September 2023, trial counsel completed the precertification review. (Precertification). On 22 September 2023, the military judge submitted her errata and authenticated the record of trial. (MJ Errata; Authentication). On 27 September 2023, the court reporter certified the record of trial, and the case was docketed with this court on 30 September 2023. (Certification; Referral and Designation of Counsel). The time elapsed from adjournment to appellate docketing was 163 days, and from entry of judgment to appellate docketing was 22 days.

The government included a memorandum in the record of trial explaining the delay, attributing it to new personnel, inexperience, training, competing duties, and increase in the court-martial tempo. (Post-Trial MFR).

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### **Standard of Review**

This court conducts a de novo review of claims of unreasonable post-trial delay. *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**

Absent a Fifth Amendment due process violation, this court considers whether relief for excessive post-trial delay is warranted based on the Court of Criminal Appeals' [CCA] sentence appropriateness authority under Article 66(d)(1), UCMJ. *United States v. Tardif*, 57 M.J. 219, 224 (C.A.A.F. 2002).

Additionally, pursuant to Article 66(d)(2), UCMJ, a CCA “may provide appropriate relief if the accused demonstrates . . . excessive delay in the processing of the court-martial after the judgment was entered into the record.” Since Article 66(d)(2), UCMJ, does not define “excessive delay,” “in considering whether a delay is excessive, this court will broadly focus on the totality of the circumstances surrounding the post-trial processing timeline for each case, balancing the interplay between factors such as chronology, complexity, and unavailability, as well as the unit’s memorialized justifications for any delay.” *United States v. Winfield*, 83 M.J. 662, 666 (Army Ct. Crim. App. 2023). Should this court find excessive delay, “Article 66(d)(2) dictates [that this court] ‘may provide appropriate relief’ and leaves the determination as to whether relief is provided, and what type of relief is appropriate, to [this court’s] discretion.” *Id.*

## Argument

Appellant does not allege his due process rights were violated; rather, he appears to assert that the government's attribution of the delay to a coalescence of personnel changeover, inexperience, development, and increased courts-martial is a facially unreasonable explanation. (Appellant's Br. 6). From this assertion, appellant concludes that "the public's perception of the integrity of the military justice system" will be adversely impacted unless appellant is granted relief, and therefore, he is so entitled. (Appellant's Br. 6). This bald assertion is not supported by the record or precedent from this court or its superior court.

Appellant seems to borrow language from *United States v. Toohey*, where the Court of Appeals for the Armed Forces evaluated Toohey's 2,240-day post-trial processing timeline through a due process lens. 63 M.J. 353, 361 (C.A.A.F. 2006) ("Hence, where there is no finding of *Barker* prejudice, we will find a due process violation only when, in balancing the other three factors, the delay is so egregious that tolerating it would adversely affect the public's perception of the fairness and integrity of the military justice system.") (citing *Barker v. Wingo*, 407 U.S. 514, 530 (1972)). There is no due process violation here, as appellant seems to concede, and his public perception argument hinging solely on the passage of 163 days from adjournment to appellate docketing, or 22 days from entry of judgment to docketing, fails as unsupportable.


With his unit deployed to Eastern Europe, appellant selfishly decided to use narcotics, and when he knew he would inevitably be caught, he deserted the Army. Once he returned, he skirted the reasonable restrictions imposed by his commander, lied to his chain of command as to his whereabouts, again absented himself without authority, continued to use and possess drugs in his barracks room, and attempted to abscond and evade his military escorts on foot. Even after this string of misconduct, the military judge sentenced appellant to the minimum term of confinement authorized under the terms of the plea agreement. (App. Ex. I, p. 4).

Balancing these facts with the minimal post-trial processing delay and the unit's explanation, further relief would be inappropriate under the circumstances of appellant's case. *See Winfield*, 83 M.J. at 666; *See also United States v. Collins*, 44 M.J. 830, 833 (Army Ct. Crim. App. 1996), pet. denied, 47 M.J. 76 (C.A.A.F. 1997) ("Providing relief that is totally disproportionate to the harm suffered, or that grants the appellant a major windfall, is neither required nor appropriate."); *United States v. Cannon*, ARMY 20220366, \_\_\_ M.J. \_\_\_, at \*2 (Army Ct. Crim. App. 22 Jan. 2024) ([summ. disp.](#)) ("After reviewing the entire record and considering the totality of the circumstances, we find while there is some delay, the explanation provided by the OSJA, albeit minimal, sufficiently memorialized the competing requirements. As such, we find the sentence appropriate and decline to grant any relief for post-trial processing delay.").




## Conclusion

WHEREFORE, the government respectfully requests this Honorable Court affirm the findings and sentence and deny relief.



KALIN P. SCHLUETER  
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Branch Chief, Government  
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JACQUELINE J. DeGAINE  
LTC, JA  
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COL, JA  
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**CERTIFICATE OF SERVICE, U.S. v. ABDULLAH (20230223)**

I certify that a copy of the foregoing was sent via electronic submission to  
the Defense Appellate Division at [REDACTED]  
[REDACTED] on the 29th day of January, 2024.

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