

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES,
Appellee

**BRIEF ON BEHALF OF
APPELLEE**

v.

Docket No. ARMY 20220411

Specialist (E-4)
JUSTIN J. DALLAS,
United States Army,
Appellant

Tried at Joint Base Lewis-McChord,
Washington, on 14 April 2022, 14 June
2022, and 11-12 August 2022, before a
general court-martial convened by the
Commander, I Corps, Colonel
Matthew S. Fitzgerald, Military Judge,
presiding.

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

Assignment of Error¹

**WHETHER THE DILATORY POST-TRIAL
PROCESSING WARRANTS RELIEF.**

Statement of the Case

On 12 August 2022, a military judge sitting as a general court-martial
convicted appellant, in accordance with his pleas, of two specifications of sexual
assault in violation of Article 120, Uniform Code of Military Justice, 10 U.S.C. §

¹ The government reviewed the matters submitted by appellant pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), and respectfully submits they lack merit. Should this Court consider any of those matters meritorious, the government requests notice and an opportunity to file a supplemental brief addressing the claimed error. *Id.* at 437.

920b, [UCMJ], and one specification of domestic violence in violation of Article 128b, UCMJ, 10 U.S.C. § 928b. (R. at 266, 350; Statement of Trial Results [STR]).² The military judge sentenced appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for four years and five months, and to be discharged from the service with a dishonorable discharge.³ (R. at 493; STR).

Statement of Facts

A. Appellant sexually assaulted two fellow soldiers and physically abused [REDACTED]

Appellant was stationed at Joint Base Lewis-McChord in 2017. (Pros. Ex. 1, p. 2). Appellant met Specialist (SPC) [REDACTED] in 2018. (Pros. Ex. 1, p. 2). On 13 September 2019, appellant went to SPC [REDACTED]'s barracks room to watch television. (Pros. Ex. 1, p. 2). Specialist [REDACTED] noticed appellant was drinking, and she became uncomfortable. (Pros. Ex. 1, p. 2). Appellant tried to lay on her bed, but she told

² In accordance with his plea agreement, Appellant pleaded not guilty to Specifications 2, 3, and 5 of Charge I; Specification 1 of Charge II; The Specification of Charge III and Charge III; and The Specification of Charge IV and Charge IV. (R. at 266–267; App. Ex. XXVI). The government moved to dismiss, without prejudice, the specifications and charges to which appellant pleaded not guilty, to ripen into prejudice upon appellate review. (R. at 349; App. Ex. XXVI; STR).

³ The military judge sentenced appellant to twenty-seven months confinement for Specification 1 of Charge I, twenty-five months confinement for Specification 4 of Charge I; and one month confinement for Specification 2 of Charge II. (R. at 493; STR). All sentences to confinement were to be served consecutively. (R. at 493; STR).

him he needed to sit up. (Pros. Ex. 1, p. 2). Appellant then grabbed her legs and started rubbing her feet, but SPC [REDACTED] told him he needed to stop touching her. (Pros. Ex. 1, p. 2). Ignoring her statement, appellant removed her pants and underwear and placed his mouth on her vulva. (Pros. Ex. 1, p. 2). Specialist [REDACTED] again told him to stop; however, appellant inserted his penis into her vagina without her consent. (Pros. Ex. 1, p. 2). After the sexual assault, appellant texted SPC [REDACTED] and apologized. (Pros. Ex. 1, p. 2).

In March of 2021, appellant and [REDACTED] were separated but still living together in the same home. (Pros. Ex. 1, p. 3). On 4 March 2021, appellant was drinking alcohol, got undressed, and attempted to kiss [REDACTED]. (Pros. Ex. 1, p. 3). She told him to leave her alone, but he grabbed her breast and pinched her nipple. (Pros. Ex. 1, p. 3). She then told him “no,” “stop,” and “you gotta stop.” (Pros. Ex. 1, p. 3). When appellant approached [REDACTED] again to tell her that food was ready, she said she was not hungry. (Pros. Ex. 1, p. 3). Appellant grabbed her arm and began twisting it. (Pros. Ex. 1, p. 3). [REDACTED] called 911, but appellant grabbed the phone from her and hung it up. (Pros. Ex. 1, p. 3). Appellant then pushed [REDACTED] against the door several times. (Pros. Ex. 1, p. 3). [REDACTED] [REDACTED] was able to take their children and leave the home. (Pros. Ex. 1, p. 3).

Appellant met Private First Class (PFC) [REDACTED] in the spring of 2021. (Pros. Ex. 1, p. 3). On 19 June 2021, appellant asked PFC [REDACTED] if he could come to her barracks room to hang out. (Pros. Ex. 1, p. 4). Private First Class [REDACTED]'s boyfriend was in the room with her. (Pros. Ex. 1, p. 4). After appellant left her room, PFC [REDACTED]'s boyfriend had to depart for a flag detail. (Pros. Ex. 1, p. 4). Appellant, noticing PFC [REDACTED]'s boyfriend had left, asked her if he could come back to her room. (Pros. Ex. 1, p. 4). When he came back to her room, he asked if they could have sexual intercourse, but PFC [REDACTED] told him, "No." (Pros. Ex. 1, p. 4). Appellant was sitting on the couch in PFC [REDACTED]'s bedroom, and she was on the bed. (Pros. Ex. 1, p. 4). Appellant walked over to PFC [REDACTED] and started to hug her and grab her buttocks. (Pros. Ex. 1, p. 4). She told him, "No," and to "stop." (Pros. Ex. 1, p. 4). He attempted to do it a second time, and she again told him to stop. (Pros. Ex. 1, p. 4). Appellant then pulled her shorts and underwear down to her legs and placed her on the bed. (Pros. Ex. 1, p. 4). He put his mouth on her vulva, and she told him to "stop" and that she "did not want to do this." (Pros. Ex. 1, p. 4). Appellant then pulled down his shorts and penetrated PFC [REDACTED]'s vulva with his penis. (Pros. Ex. 1, p. 5). Private First Class [REDACTED] sent a text message to appellant confronting him. (Pros. Ex. 1, p. 5). Appellant responded back and apologized. (Pros. Ex. 1, p. 5).

B. Plea Agreement

On 3 August 2022, appellant and the convening authority entered into a plea agreement which required appellant to plead guilty to three specifications in exchange for sentencing limitations. (App. Ex. XXVI). The following sentencing limitations were agreed upon: to serve a minimum of 730 days (two years) confinement and maximum 2,556 days (seven years) confinement.⁴ (App. Ex. XXVI). A dishonorable discharge shall be adjudged.⁵ (App. Ex. XXVI). All other lawful punishments may be adjudged. (App. Ex. XXVI).

C. Post-trial processing.

Appellant's court-martial adjourned on 12 August 2022. (R. at 494). On 22 August 2022, appellant requested that the convening authority defer adjudged forfeitures and rank reduction and waive automatic forfeitures for a period of six months. (Deferment and Waiver Request). On 30 August 2022, the convening authority disapproved appellant's request for deferment and waiver of forfeitures and rank reduction. (Action). He took no action on the findings or sentence. (Action). The military judge entered judgment on 22 September 2022. (Judgment). The trial counsel completed the pre-certification on 20 December

⁴ The minimum confinement for each individual specification was 0 days, while the maximum was 2,556 days.

⁵ A dishonorable discharge is a mandatory minimum for Specifications 1 and 4 of Charge I. (*Manual for Courts-Martial, United States* (2019 ed.) [MCM], pt. IV, ¶ 60.d.(1)).

2023. (Precertification). The military judge authenticated the record on 28 December 2023. (Authentication). On 29 December 2023, Appellant requested speedy post-trial processing. (Def. App. Ex. A).⁶ The court reporters certified the transcript on 29 December 2023. (Certification). On 18 January 2024, the Office of the Staff Judge Advocate (OSJA) provided a memorandum detailing the post-trial processing of the case. (Post-Trial Processing Memorandum). This court docketed the case on 31 January 2024. (Referral and Designation of Counsel).

Assignment of Error

WHETHER THE DILATORY POST-TRIAL PROCESSING WARRANTS RELIEF.

Standard of Review

This court conducts a de novo review of claims of unreasonable post-trial delay. *United States v. Winfield*, 83, M.J. 662, 666 (Army Ct. Crim. App. 2023).

Law

There are two distinct analyses in addressing claims of post-trial delay: determining whether appellant suffered a due process violation under the Constitution, and determining sentence appropriateness under Article 66(d), UCMJ. *United States v. Simon*, 64 M.J. 205, 207 (C.A.A.F. 2006).

⁶ Appellant filed a motion to attach Def. App. Ex. A contemporaneously with his brief.

A. Fifth Amendment Procedural Due Process.

Servicemembers convicted at courts-martial have a due process right, under the Fifth Amendment, to post-trial processing without unreasonable delay. *Diaz v. Judge Advocate General of the Navy*, 59 M.J. 34, 38 (C.A.A.F. 2003). In order to analyze post-trial delays and due process, appellate courts analyze four factors (*Barker* factors) that examine: “(1) the length of the delay; (2) the reasons for the delay; (3) the appellant’s assertion of the right to timely review and appeal; and (4) prejudice.” *Barker v. Wingo*, 407 U.S. 514, 530 (1972); *United States v. Moreno*, 63 M.J. 129, 135 (C.A.A.F. 2006).⁷ The four *Barker* factors must be balanced, and “no single factor [is] required to find that post-trial delay constitutes a due process violation.” *United States v. Toohey*, 63 M.J. 353, 361 (*Toohey II*) (C.A.A.F. 2006) (quoting *Moreno*, 63 M.J. at 136) (citing *Barker*, 407 U.S. at 533). The *Barker* analysis, however, is not required if this court determines that any due process violation is harmless beyond a reasonable doubt. *United States v. Finch*, 64 M.J. 118, 125 (C.A.A.F. 2006).

⁷ Additionally, Courts of Criminal Appeals (CCAs) will also further examine prejudice in light of three primary sub-factors: (1) prevention of oppressive incarceration; (2) minimization of appellant’s anxiety and concern while awaiting the outcome of the appeal; and (3) limiting the possibility of impairment of the grounds for appeal and defense at a possible rehearing. *Moreno*, 63 M.J. at 139–40. None of these factors are implicated in this case, and appellant does not allege any prejudice.

In situations where an appellant is unable to show they have suffered prejudice, the court will find a due process violation only when, “in balancing the other three factors, [the post-trial] delay is so egregious that tolerating it would adversely affect the public’s perception of the fairness and integrity of the military justice system.” *Toohey*, 63 M.J. at 362. If the court finds a due process violation, the burden shifts to the government to prove the constitutional error was harmless beyond a reasonable doubt. *United States v. Ashby*, 68 M.J. 108, 125 (C.A.A.F. 2009) (quoting *Chapman v. California*, 386 U.S. 18, 24 (1967)). In determining whether a due process error was harmless beyond a reasonable doubt, the court analyzes the case for prejudice. *Id.* This analysis is “separate and distinct from the consideration of prejudice as one of the four *Barker* factors.” *Id.* Under this review, the court considers “the totality of the circumstances” based on the “entire record.” *Id.* The court “will not presume prejudice from the length of the delay alone,” but instead requires “evidence of prejudice in the record.” *Id.*

B. Sentence Appropriateness.

Absent a due process violation, this court next considers whether relief for excessive post-trial delay is warranted based on the CCA’s 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.” Because 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.” *Winfield*, 83 M.J. at 666. Even if there is 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

Based on the *Barker* factors, the government did not violate appellant’s due process rights. Further, considering the totality of the circumstances in this case, appellant deserves no relief under a sentence appropriateness analysis because appellant did not suffer prejudice, his sentence is appropriate, and there is no harm to correct. Finally, appellant has not demonstrated error or excessive delay under Article 66(d)(2), UCMJ, that would warrant relief. Therefore, this court should affirm the findings and sentence as adjudged.

A. The first, second, and third *Barker* factors weigh in favor of appellant.

From the date appellant's court-martial adjourned to when this court referred the case to counsel, 537 days elapsed. (R. at 494; Referral and Designation of Counsel). Thus, under the particular facts of this case, the first factor weighs in favor of appellant.

The OSJA attributes the delay to a back-log of cases and negligence in updating trackers, sending out audio, and following up on outsourced audio transcribing. (Post-Trial Processing Memorandum). Based on this justification, the second *Barker* factor weighs in favor of appellant.

Finally, appellant requested speedy post-trial processing on 29 December 2023, the day after the military judge certified the record of trial. (Def. App. Ex. A). This weighs slightly in appellant's favor.

B. The fourth *Barker* factor weighs in favor of the government.

Appellant does not allege that he suffered any prejudice. Therefore, the fourth *Barker* factor weighs in favor of the government.

C. The delay does not impugn the fairness or integrity of the military justice system.

Appellant has failed to show that the delay was so egregious as to "adversely affect the public's perception of the fairness and integrity of the military justice system" and overcome the absence of prejudice. As such, the "difficult and sensitive balancing process" of the facts of this case show that appellant did not

suffer a due process violation. *Id.*, at 145. Even if this court found a due process violation, appellant has pointed to no specific harm, as argued above, so any due process violation is harmless beyond a reasonable doubt. *See United States v. Bush*, 68 M.J. 96, 104 (C.A.A.F. 2009) (holding that seven-year post-trial delay due process violation was harmless beyond a reasonable doubt); *See also United States v. Allende*, 66 M.J. 142, 145 (C.A.A.F. 2008) (holding that appellant did not suffer detriment to his legal position in his appeal as a result of an almost seven year delay between adjournment and completion of appellate review).

D. Appellant does not merit relief under an Article 66(d)(2) analysis.

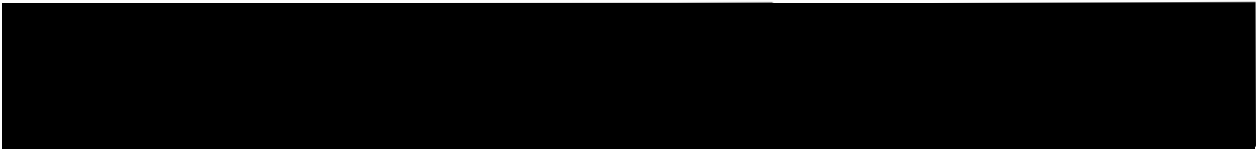
Under the specific facts of this case, while the delay was long, it was not excessive. If this court finds excessive delay, however, Article 66(d)(2) “dictates [this court] ‘may provide appropriate relief’ and leaves the determination as to whether relief is provided, and what type of relief is appropriate, to [this court’s] discretion.” *Winfield*, 83 M.J. at 666. Appellant asks this court to reduce appellant’s confinement by one year. (Appellant’s Br. 6). No relief is appropriate in this case. Appellant pleaded guilty to two specifications of sexual assault and one specification of domestic violence in violation of Articles 120 and 128b, UCMJ. (STR; R. at 266, 350). Based solely on the specifications appellant pleaded guilty to at general court-martial, he faced a maximum punishment of reduction to the grade of E-1, forfeiture of all pay and allowances, confinement for

sixty-two years, and a dishonorable discharge. (R. at 317; *MCM*, 2019, App'x.

12). Appellant's plea agreement limited appellant's confinement to a maximum of seven years (2,556 days) confinement. (STR; App. Ex. XXVI). Appellant was sentenced to four years and five months, a fraction of the maximum punishment he was facing if he had not pleaded guilty and well under his bargained for maximum confinement limitation. (STR; R. at 493). Any sentence relief is inappropriate in this case.

Conclusion

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



CHASE C. CLEVELAND
MAJ, JA
Branch Chief, Government
Appellate Division

RICHARD E. GORINI
COL, JA
Chief, Government Appellate
Division

CERTIFICATE OF SERVICE, U.S. v. DALLAS (20220411)

I certify that a copy of the foregoing was sent via electronic submission to
the Defense Appellate Division at [REDACTED]
[REDACTED] on the 19th day of July, 2024.

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