IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES Appellee	**BRIEF ON BEHALF OF APPELLANT**
v.	Docket No. ARMY 20240096
Sergeant (E-5) **CRISTIAN U. LOZANO,** United States Army, Appellant	Tried at Panzer Kaserne, Germany, on 4 March 2024, before a special court-martial appointed by the Commander, 7th Army Training Command, Lieutenant Colonel Thomas P. Hynes, military judge, presiding.

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

Assignments of Error

I. WHETHER 372 DAYS OF POST-TRIAL DELAY WARRANTS RELIEF FOR A GUILTY PLEA WITH A TRANSCIPT OF 153 PAGES.

Statement of the Case

On 4 March 2024, a military judge sitting as a special court-martial convicted appellant, Sergeant (SGT) Cristian U. Lozano, in accordance with his pleas, of the charges and specifications. (R. at 79; Charge Sheet). On the same day,

the military judge sentenced appellant to eight months confinement and to be discharged from the service with a bad-conduct discharge.[1] (R. at 152).

On 15 March 2024, the convening authority took no action as to the findings and adjudged sentence and approved the request for deferment of reduction in grade and automatic forfeitures. (Convening Authority Action). On 9 April 2024, the military judge entered Judgment. (Judgment of the Court). This Court docketed appellant's case on 11 March 2025. (Referral and Designation of Counsel).

I. WHETHER 372 DAYS OF POST-TRIAL DELAY WARRANTS RELIEF FOR A GUILTY PLEA WITH A TRANSCIPT OF 153 PAGES.

Statement of Facts

From post-trial's start to finish, 372 days passed before the case was referred to counsel on 11 March 2025. (Referral and Designation of Counsel). The transcript is only 153 pages long. (R. at 153).

[1] The military judge sentenced appellant as follows:

Charge I, Specification 1	8 months
Charge I, Specification 2	8 months
Charge I, Specification 3	8 months
Charge II, Specification 1	8 months
Charge II, Specification 2	8 months

The military judge ordered all sentences to confinement to run concurrently. (R. at 152).

The military judge sentenced appellant on 4 March 2024. (R. at 152). About two months later, the trial counsel pre-certified the record on 3 May 2024. (Trial Counsel Certification). The military judge authenticated the record on 4 May 2024. (Military Judge Authentication). The court reporter certified the record of trial and transcript on 5 May 2024. (Court Reporter Certification).[2] From 6 May 2024 through 12 February 2025, roughly nine months, the government provided no information until it mailed the record to this Court on 13 February 2025. (PS Form 3877). This Court docketed appellant's case on 11 March 2025. (Referral and Designation of Counsel).

Standard of Review

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

Law and Argument

The right of service members to timely review of their appeals is rooted in both the Due Process Clause of the Constitution and Article 66, UCMJ. *Toohey v. United States*, 60 M.J. 100, 101 (C.A.A.F. 2004) ("*Toohey I*").

[2] The government included one quasi-official document which has the dates mentioned above for certification occurring between 3-6 May 2024. This document is unsigned.

A. Due Process Clause

The framework for analyzing post-trial delay and due process is set out in *Barker v. Wingo*: (1) length of the delay; (2) reasons for the delay; (3) appellant's assertion of the right to timely review and appeal; and (4) prejudice. 407 U.S. 514, 530 (1972); *United States v. Moreno*, 63 M.J. 129, 135 (C.A.A.F. 2006); *Winfield*, 83 M.J. at 665. However, no single factor is required; even without specific prejudice, for this Court to grant relief for unreasonable and unexplained post-trial delay. *United States v. Toohey II*, 63 M.J. 353, 362 (C.A.A.F. 2006).

Notably, this Court has determined that a specific period of unexplained inactivity can constitute a due process violation. *United States v. Morris*, ARMY 20210624, 2023 CCA LEXIS 197, *2 (Army Ct. Crim. App. 8 May 2023) (summ. disp.); *United States v. Jefferson*, ARMY 20220448, 2023 CCA LEXIS 382, *4-5 (Army Ct. Crim. App. 6 July 2023) (summ. disp.). In *Morris*, this Court found a due process violation for an unexplained sixty-plus day delay in delivering the record of trial to the military judge. *Id*. This Court stated, "Even in the absence of prejudice . . . this delay violates The Due Process Clause of the Fifth Amendment after balancing the *Barker* factors, because it rises to a level of egregiousness such that it would adversely affect the public's perception of the fairness and integrity of the military justice system." *Id*. (citing *Toohey* II, 63 M.J. at 362).

1. The Length of Delay

The length of delay at hand is 372 days for a 153-page transcript. (Chronology Sheet). This delay is unreasonable.

2. The Reasons for the Delay

The second *Barker* factor examines "the Government's responsibility for any delay, as well as any legitimate reasons for the delay, including those attributable to an appellant." *See Moreno*, 63 M.J. at 136. "Where a unit does not even try to give the explanation due under binding precedent, appellate relief will often follow for a violation of Due Process." *See e.g., Pulley*, 2023 CCA Lexis 289. Here, the government failed to offer any reason for the delay. This egregious apathy and disdain for appellant's rights would adversely affect the public's perception of fairness and integrity of the military justice system.

3. Appellant's Request for Expeditious Post-Trial Processing

Appellant did not assert his right to speedy post-trial processing. However, allowing this factor to outweigh the others would send the message the government's responsibility to ensure fair and just processing is somehow contingent on defendant's actions who "bear[s] no responsibility" for the certification and transmission of trial records. *Moreno,* 63 M.J. at 138. Such a message is not only inconsistent with the responsibility entrusted to government

actors noted in caselaw but would call into question the integrity of the military justice system. At most, this Court should view this factor as neutral. An extremely low standard would be for the government to complete the post-trial processing within a reasonable timeframe. For a case with a 153-page transcript, where appellant received eight months in confinement, it could have been four months. Instead, the government failed and fell drastically short of this low standard, taking over a year to process this short case.

4. Prejudice

Appellant sat in confinement for his entire sentence, while the government failed to process his case. However, if this Court believes appellant does not have actual prejudice, then it may still find a violation if "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." *Toohey II*, 63 M.J. at 362.

In *Jefferson*, the government took a total of 164 days for a 170-page transcript and attempted to blame the military judge for 60 days of delay (which the Judge disputed). *Jefferson*, 2023 CCA LEXIS 382, at *1-2. This Court found that even though the appellant did not demonstrate prejudice, the government's lack of justification or explanation for the delay affects the "public's perception of

fairness and integrity of the military justice system," and relief was justified under the Due Process Clause. *Id.* Here, the government does not even try to justify the year delinquency choosing to remain silent on the matter, to this day. This 372-day delay is far worse than the facially unreasonable delay in *Jefferson* that triggered a full analysis and a finding of a Due Process violation. This case had a shorter record than *Jefferson*, yet took almost seven months longer to process.

Therefore, even if this Court does not find prejudice, the balance of the remaining factors demonstrate that appellant's due process rights were violated by the dilatory and inexcusable processing delays. *Id.*

B. Article 66, Uniform Code of Military Justice (UCMJ)

Even absent a constitutional violation, this Court is authorized to grant relief for post-trial delay under Article 66, UCMJ. Article 66(d)(1) and (2) provide "broad authority" to review and modify sentences. *United States v. Tardif*, 57 M.J. 219, 224 (C.A.A.F. 2002). As such, this Court may grant relief for post-trial delay without a showing of actual prejudice. *Id*. at 224 (citing *United States v. Collazo*, 53 M.J. 721, 727 (Army Ct. Crim. App. 2000)). While this Court must consider "all the facts and circumstances reflected in the record," *Tardif*, 57 M.J. at 224, "personnel and administrative issues" are not "legitimate reasons" to excuse the delay. *United States v. Arriaga*, 70 M.J. 51, 57 (C.A.A.F. 2011). Allowing caseloads to become a factor

would "trump the Article 66 and due process rights of appellants." *Moreno*, 63 M.J. at 137 (internal quotation omitted).

Furthermore, this Court may provide appropriate relief under Article 66(d)(2) if an appellant demonstrates "excessive delay in the processing of the court-martial after the judgment was entered into the record." *Id*. Like *Moreno*, where post-trial delay is found to be unreasonable, but not a due process violation, this Court still has authority under Article 66(d)(2), UCMJ to grant relief for excessive post-trial delay. *See United States v. Valentin-Andino*, 85 M.J. 361 (C.A.A.F. 2025). Additionally, Article 66(d)(2) allows this Court to grant relief for post-trial delay *without* a prejudice showing. *Id*; *United States v. Lathrop*, 2025 CCA LEXIS 63, *4 (Army Ct. Crim. App. 2025) (mem. op.) (citing *United States v. Tardif*, 57 M.J. 219, 224 (C.A.A.F. 2002) (overturned on other grounds).[3]

When determining whether delay is excessive, this Court focuses on the totality of the circumstances and "balance[s] the interplay between factors such as chronology, complexity, and unavailability, as well as the unit's memorialized justifications for any delay." *Winfield*, 2023 CCA LEXIS 189, at *5. None of which the government provided here, thus cannot be weighed. In this case, this Court looks

[3] "Errors regarding post-trial delay are now solely governed by Article 66(d)(2). Accordingly, *Tardif* and its progeny have been superseded by Article 66(d)(2)." *Valentin Andino*, 85 M.J. 361 n.4 (C.A.A.F. 2025).

at an unexcused nine-month hole in the record, longer than the adjudged sentence. The government took 372 days to docket appellant's case after sentencing and provided no explanation for the delay. Since the government chose to remain silent, offered no rational reason for the delay, and clearly failed the post-trial process, appropriate relief is readily available and should be authorized in this case.

Conclusion

For the foregoing reasons, this Court should grant appropriate and meaningful relief for the excessive post-trial delay.

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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 7, 2025.

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