

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
BROOKHART, PENLAND, and ARGUELLES¹
Appellate Military Judges

UNITED STATES, Appellee
v.
Staff Sergeant DENZEL C. COOPER
United States Army, Appellant

ARMY 20200614

Headquarters, Fort Stewart
G. Bret Batdorff and Trevor Barna, Military Judges
Lieutenant Colonel Andrew K. Kernan, Acting Staff Judge Advocate (pretrial)
Lieutenant Colonel Nicole L. Fish, Acting Staff Judge Advocate (post-trial)

For Appellant: Captain Carol Rim, JA; Daniel Conway, Esquire (on brief and reply brief).

For Appellee: Colonel Christopher B. Burgess, JA; Lieutenant Colonel Craig J. Schapira, JA; Captain Thomas J. Darmofal, JA (on brief).

7 July 2022

SUMMARY DISPOSITION

This opinion is issued as an unpublished opinion and, as such, does not serve as precedent.

ARGUELLES, Judge:

Appellant argues he is entitled to relief for dilatory post-trial processing where more than six months elapsed between the entry of judgment and the certification of the record. We agree and provide relief in our decretal paragraph.²

¹ Judge Arguelles decided this case while on active duty.

² We have given full and fair consideration to appellant's other assigned errors, and find them to be without merit.

BACKGROUND

The Convening Authority referred appellant's case to a general court-martial on 2 January 2020. On 28 October 2020, a military judge sitting as a general court-martial convicted appellant, contrary to his pleas, of one specification of violation of a lawful general regulation and one specification of sexual assault, in violation of Articles 92 and 120, Uniform Code of Military Justice, 10 U.S.C. §§ 892, 920 [UCMJ]. The military judge sentenced appellant to a dishonorable discharge, confinement for one year, and reduction in rank to the grade of E-1. On 24 November 2020, the convening authority approved the findings and sentence, and the military judge entered judgment on 2 December 2020. Appellant requested speedy post-trial processing on 7 November 2020.

On 14 May 2021, trial counsel completed his precertification review of the 453-page record of trial (ROT). After receiving the ROT on 24 May 2021, the military judges authenticated it on 30 May 2021 and 1 June 2021. On 2 June 2021, the court reporter certified the ROT and transcript. There is no explanation in the record, or appellee's brief, as to why it took 163 days after the entry of judgment for trial counsel to complete his review, which ultimately led to a 182-day delay between the entry of judgment and the final certification. We received appellant's case on 28 June 2021, 242 days after the announcement of sentence.

LAW AND DISCUSSION

Claims of unreasonable post-trial delay are reviewed de novo. *United States v. Moreno*, 63 M.J. 129, 135 (C.A.A.F. 2006). "Due process entitles convicted service members to a timely review and appeal of court-martial convictions." *Id.* at 132 (citing *Toohey v. United States*, 60 M.J. 100, 101 (C.A.A.F. 2004)). For cases referred on or after 1 January 2019, "this court will presume unreasonable delay in cases when more than 150 days elapse between final adjournment and docketing with this court." *United States v. Brown*, 81 M.J. 507, 510 (Army Ct. Crim. App. 2021).

The number of days from adjournment to final docketing with this court was 242 days. Given the presumption of unreasonable delay in this case, we look to the four factors set forth in *Barker v. Wingo*, 407 U.S. 514 (1972), to conduct our due process review: "(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." *Moreno*, 63 M.J. at 135. The four factors are balanced, and no one factor is dispositive. *Id.* at 136. Appellant argues that all four *Barker* factors weigh in his favor and support a finding of a due process violation. Although we agree that the first three factors weigh in favor of appellant, because appellant has not identified any particularized anxiety or concerns, or specifically identified how the delay would prejudice him at any rehearing, he has failed to demonstrate prejudice. Additionally, in the absence of *Barker* prejudice, we find the delay was not "so

egregious that tolerating it would adversely affect the public's perception of the fairness and integrity of the military justice system." *United States v. Toohey*, 63 M.J. 353, 362 (C.A.A.F. 2006). We therefore conclude there is no due process violation in this case.

However, our inquiry does not end there. "Absent a due process violation, this court considers whether relief for excessive post-trial delay is warranted based on this court's sentence appropriateness authority under *Article 66(d), UCMJ*." *Brown*, 81 M.J. at 510 (emphasis in original); see *United States v. Tardif*, 57 M.J. 219, 224 (C.A.A.F. 2002); *United States v. Arias*, 72 M.J. 501, 507 (Army Ct. Crim. App. 2013). Having considered the entire record, to include the lack of any compelling reason or explanation for the delay of over six months between the entry of judgment and final certification of the record, we find that a 15-day reduction in sentence to confinement is appropriate in this case.

CONCLUSION

Upon consideration of the entire record, the findings of guilty are **AFFIRMED**. Only so much of the sentence extending to a dishonorable discharge, confinement for eleven months and fifteen days, and reduction in rank to the grade of E-1 is **AFFIRMED**. All rights, privileges, and property, of which appellant has been deprived by virtue of that portion of his sentence set aside by this decision are ordered restored.

Senior Judge BROOKHART and Judge PENLAND concur.

FOR THE COURT:



JAMES W. HERRING, JR.
Clerk of Court