

# UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before  
FLEMING, DENNEY,<sup>1</sup> and MORRIS  
Appellate Military Judges

**UNITED STATES, Appellee**  
**v.**  
**Specialist SHADAI A. BRIMMER**  
**United States Army, Appellant**

ARMY 20210622

Headquarters, U.S. Army Maneuver Support Center of Excellence  
and Fort Leonard Wood  
Steven C. Henricks, Military Judge  
Colonel Robert E. Samuelson II, Staff Judge Advocate

For Appellant: Colonel Michael C. Friess, JA; Lieutenant Colonel Dale C. McFeatters, JA; Major Rachel P. Gordienko, JA; Captain Kevin T. Todorow, JA (on brief).

For Appellee: Colonel Christopher B. Burgess, JA; Lieutenant Colonel Jacqueline J. DeGaine, JA; Major Kalin P. Schleuter, JA; Captain Melissa A. Eisenberg, JA (on brief).

9 June 2023

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*This opinion is issued as an unpublished opinion and, as such, does not serve as precedent.*

DENNEY, Judge:

Appellant's case is one of many cases to come before the court on the issue of unreasonable post-trial delay. Appellant requests this court set aside her punitive discharge as a remedy for the unreasonable post-trial delay. We write to address appellant's assigned error in light of this court's recent opinion in *United States v. Winfield*, \_\_ M.J. \_\_, 2023 CCA LEXIS 189 (Army Ct. Crim. App 27 Apr. 2023). While we find the delay in processing appellant's case excessive, we find

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<sup>1</sup> Judge Denney decided this case on active duty.

appellant is entitled to no relief and affirm the conviction and sentence in the decretal paragraph below.<sup>2</sup>

## BACKGROUND

On 19 November 2021, a military judge sitting as a general court-martial convicted appellant, pursuant to her pleas, of one specification each of conspiracy to sell military property and selling military property without authorization in violation of Articles 81 and 108, Uniform Code of Military Justice, 10 U.S.C. §§881, 908. The military judge sentenced appellant to be confined for a period of six months and to be separated from the Army with a bad-conduct discharge. On 16 December 2021, the convening authority took no action on the findings or sentence. The military judge entered judgment on 19 January 2022. The case was docketed with this court on 14 January 2023—421 days after adjournment of appellant's court-martial.

Appellant was a supply specialist at Fort Leonard Wood. In the fall of 2020, appellant and another supply specialist conspired to sell excess Meals, Ready-to-Eat (MREs) to a military surplus store outside post.<sup>3</sup> Appellant and her co-conspirator conducted several transactions selling boxes of MREs at the same store over the course of several months, and at least five transactions in September of 2020. The loss to the U.S. Government was \$116.52 per box. The appellant and co-conspirator received \$20.00 per box from the surplus store. Army Criminal Investigation Command (CID) obtained a search warrant for the store and found more than 500 boxes of MREs with lot numbers matching those issued to the appellant and co-conspirator's unit with a value of more than \$58,000. Appellant admitted to selling approximately 290 boxes to the surplus store in September 2020 with a value of \$33,790.80. Appellant's guilty plea acknowledged that the MREs were military property of a value greater than \$10,000.

The Chief of Military Justice provided a memorandum to justify the post-trial processing time for this case. Shortly after appellant's court-martial, in early December 2021, the sole court reporter (who also served as the sole post-trial specialist) at Fort Leonard Wood resigned. A replacement court reporter was hired on 14 February 2022. The Staff Judge Advocate attributed the post-trial delay to a backlog of actions that occurred when the new court reporter/post-trial specialist assumed the role and attended the 6-week Basic Court Reporter Course. When the

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<sup>2</sup> We have given full and fair consideration to the matters personally raised by appellant pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), and find they warrant neither discussion nor relief.

<sup>3</sup> The co-conspirator (Specialist Jones) pled guilty to the same offenses at a separate court-martial.

new court reporter/post-trial specialist returned from training, Fort Leonard Wood had “many cases requiring transcription and post-trial processing.” The record of trial in this case was only 158 pages.

## LAW AND DISCUSSION

We review allegations of unreasonable post-trial delay de novo. *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).

We are a court of limited jurisdiction, and one limit comes from Article 59(a), UCMJ: “A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.” *See also United States v. Cueto*, 82 M.J. 323, 334 (C.A.A.F. 2022); *United States v. Hamilton*, 78 M.J. 335, 342-43 (C.A.A.F. 2019).

Despite the limits contained in Article 59(a), multiple sources grant an appellant the right to post-trial processing free of unreasonable delay. One is the Due Process Clause of the Fifth Amendment to the Constitution which states, “No person shall be ... deprived of life, liberty, or property, without due process of law ....” Another is Article 66(d)(2), UCMJ, which authorizes service 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 ....”

*United States v. Moreno* is perhaps one of the most influential military cases on the issue of post-trial delay, presuming reasonableness for post-trial processing where: convening authorities take initial post-trial action within 120 days of trial; appellate docketing occurs 30 days after initial post-trial action; and appellate review concludes within eighteen months of docketing. 63 M.J. 129, 142 (C.A.A.F. 2006). Our superior court grounded this reasoning in the Due Process Clause, quoting Supreme Court and other federal court decisions: “[T]he procedures used in deciding appeals must comport with the demands of the Due Process and Equal Protection Clauses of the Constitution.” *Evitts v. Lucey*, 469 U.S. 387, 393 (1985). “[A]n appeal that is inordinately delayed is as much a ‘meaningless ritual,’ as an appeal that is adjudicated without the benefit of effective counsel or a transcript of the trial court proceedings.” *Harris v. Champion (Harris II)*, 15 F.3d. 1538, 1558 (10th Cir. 1994) (quoting *Douglas v. California*, 372 U.S. 353, 358 (1963)) (cleaned up).

Our superior court applied the four factors from *Barker v. Wingo*, a Sixth Amendment speedy trial case, in order to provide a framework for analyzing post-trial delay and due process: (1) length of 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); *Moreno*, 63 M.J. at 135. In *United States v. Toohey*, our superior court further held: “[N]o single factor [is] required to find that post-trial delay constitutes a due process violation.” 63 M.J. 353, 361 (*Toohey II*) (C.A.A.F. 2006) (quoting *Moreno*, 63 M.J. at 136).

This court recently overruled the 150-day timeline for presumption of unreasonable delay from *United States v. Brown*, 81 M.J. 507 (Army Ct. Crim. App. 2021) in *United States v. Winfield*.

This court stated in *Winfield* that we:

will no longer presume reasonableness when a case takes less than 150 days between sentencing and appellate docketing. Instead, we will scrutinize even more closely the unit-level explanations for post-trial processing delays between final adjournment and appellate docketing, including those less than 150 days. Staff judge advocates who decline to memorialize delays with thorough, credible, and relevant specificity do so at the peril of their units’ cases on appeal. We do not presume to be prescriptive in this regard. Nonetheless, we are consistently interested to know about a case’s transcript length, competing requirements (e.g., *actual* operational exigencies, in-court coverage), military judge availability, court reporter availability and utilization for transcription, and resource shortfalls (e.g., insufficient throughput capacity despite court reporter regionalization).

*Winfield*, 2023 CCA LEXIS 189 at \*7.

In the present case, appellant did not request timely review of her case, and she fails to establish any prejudice from the post-trial delay. In fact, appellant’s brief does not even address the *Barker* factors for post-trial delay and due process. Instead, appellant argues that relief should be granted for post-trial delay despite lack of prejudice. Pursuant to Article 66(d)(2), UCMJ, this court has the authority and framework to decide this case. Article 66(d)(2) states “the Court *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” (emphasis added). Although Article 66(d)(2) does not define “excessive delay”, in *Winfield*, this court stated that it 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*, 2023 CCA LEXIS 189 at \*8.

As for this case, we find that 421 days to complete a 158-page record is excessive under the totality of the circumstances. This was not a complex case. However, the delay in processing appears to be due to the lack of a certified court-reporter for months after appellant’s court-martial. This occurred because the sole

court-reporter at Fort Leonard Wood resigned shortly after appellant's court-martial. The unit's explanation for the delay focuses on unavailability due to losing its sole court reporter who also served as its sole post-trial specialist. It took several months to hire a new court reporter who then had to attend months of training in order to become certified. This explanation is not a generic one and does mitigate the delay in preparing appellant's record of trial in this case. Appellant cites *United States v. Arriaga* to note "personnel and administrative issues, *such as those raised by the Government in this case*, are not legitimate reasons justifying otherwise unreasonable post-trial delay." 70 M.J. 51, 57 (C.A.A.F. 2011) (emphasis added). The personnel issues raised in this case, unlike in *Arriaga*, are not merely a busy team with an extensive workload but the resignation of the only court reporter at the installation qualified to perform the work appellant claims was not timely performed.

While we find there is excessive delay in this case, Article 66(d)(2) dictates we "may provide appropriate relief" and leaves the determination as to whether relief is provided, and what type of relief is appropriate, to our discretion. We determine that there is no appropriate relief available as appellant was sentenced to six months of confinement and a punitive discharge, which we find to be an appropriate sentence and decline to set the punitive discharge aside. Appellant's conduct involved a conspiracy by supply specialists to unlawfully sell military property (hundreds of MRE boxes) valued over \$10,000 in a number of illicit transactions over a six-month span to a military surplus store. She admitted to committing the criminal conduct to make money and acknowledged to the military judge the conspiracy only ended because "we got caught." No relief is warranted under the circumstances of this case.

### CONCLUSION

On consideration of the entire record, the findings of guilty and the sentence are AFFIRMED.

Senior Judge FLEMING and Judge MORRIS concur.

FOR THE COURT:

  
JAMES W. HERRING, JR.  
Clerk of Court