

# UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before  
MULLIGAN, HERRING, and BURTON  
Appellate Military Judges

**UNITED STATES, Appellee**  
**v.**  
**Sergeant ERIC J. HYATT**  
**United States Army, Appellant**

ARMY 20130537

Headquarters, 7th Infantry Division  
David L. Conn and Stefan R. Wolfe, Military Judges  
Major Christopher M. Ford, Acting Staff Judge Advocate

For Appellant: Colonel Kevin Boyle, JA; Major Amy E. Nieman, JA; Captain Robert H. Meek, III, JA (on brief); Colonel Mary J. Bradley, JA; Major Christopher D. Coleman, JA; Captain Jennifer K. Beerman, JA (on amended brief).

For Appellee: Colonel Mark H. Sydenham, JA; Major Daniel D. Derner, JA; Captain Samuel E. Landes, JA (on brief).

17 December 2015

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SUMMARY DISPOSITION  
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Per Curiam:

A panel of officers sitting as a general court-martial convicted appellant, contrary to his pleas, one specification of making a false official statement, one specification of wrongfully selling military property, and two specifications of larceny, in violation of Articles 107, 108, and 121, Uniform Code of Military Justice, 10 U.S.C. §§ 907, 908 and 921 (2012) [hereinafter UCMJ]. The panel sentenced appellant to a bad-conduct discharge, 120 days confinement, a total forfeiture of all pay and allowances, and a reduction to the grade of E-1. The convening authority approved the adjudged sentence.

This case is before us for review pursuant to Article 66, UCMJ. Appellant raises one assignment of error—dilatory post-trial processing—which warrants discussion and relief. The matters personally raised by appellant pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), are without merit.

The panel adjudged appellant's sentence on 6 June 2013. The record of trial for this contested case covers five volumes and 510 pages of transcript. The

convening authority took action 319 days later, on 21 April 2014. The total time for processing the case from conviction to action, subtracting 51 days attributable to the defense, was 268 days. Appellant first raised the issue of the delay of the post-trial processing of his case in his post-trial matters, submitted 309 days after trial. The record of trial was received by this court 36 days after the convening authority's action.

The time between completion of the trial and action by the convening authority, having exceeded the standard of 120 days set forth by our superior court is presumptively excessive. *United States v. Moreno*, 63 M.J. 129, 135 (C.A.A.F. 2006). As more than 30 days passed from the convening authority's action until the receipt of the record of trial by this court, that delay is likewise excessive. Considering these delays in light of the factors set forth by the Supreme Court in *Barker v. Wingo*, we do not find a due process violation. 407 U.S. 514, 530 (1974). The government's reason for the delays—essentially, insufficient court reporter support given overall caseload demands—is not persuasive. *See United States v. Arriaga*, 70 M.J. 51, 57 (C.A.A.F. 2011). However, appellant did not complain of the delay until submission of his post-trial matters and has not alleged or shown any prejudice.

Even though we find no due process violation, we review the appropriateness of the sentence in light of the unjustified delay in post-trial processing. UCMJ, art. 66(c). *See Moreno*, 63 M.J. at 138-142; *United States v. Tardif*, 57 M.J. 219, 224 (C.A.A.F. 2002). Considering the entire record, we conclude appellant's case warrants a thirty-day reduction in confinement.

### CONCLUSION

The findings of guilty are AFFIRMED. After considering the entire record, we AFFIRM only so much of the sentence as provides for a bad-conduct discharge, 90 days confinement, a total forfeiture of all pay and allowances, and a reduction to the grade of E-1. All rights, privileges, and property, of which appellant has been deprived by virtue of that portion of the sentence set aside by this decision are ordered restored. *See* UCMJ arts. 58b(c) and 75(a).



FOR THE COURT:

A handwritten signature in black ink, appearing to read "John P. Taitt".

JOHN P. TAITT  
Deputy Clerk of Court