

# UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before  
TOZZI, CAMPANELLA, and CELTNIIEKS  
Appellate Military Judges

**UNITED STATES, Appellee**  
**v.**  
**Specialist BILLY J. WHISMAN, JR.**  
**United States Army, Appellant**

ARMY 20121096

Headquarters, Fort Hood  
Kirsten Brunson, Military Judge  
Colonel Stewart W. Risch, Staff Judge Advocate

For Appellant: Colonel Kevin Boyle, JA; Lieutenant Colonel Peter Kageleiry, Jr., JA; Major Vincent T. Shuler, JA; Captain Patrick J. Scudieri, JA (on brief).

For Appellee: Colonel John P. Carrell, JA; Lieutenant Colonel James L. Varley, JA; Major Matthew T. Grady, JA; Captain Sean P. Fitzgibbon, JA (on brief).

12 August 2014

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SUMMARY DISPOSITION  
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Per curiam:

Upon review of the entire record pursuant to Article 66(c), UCMJ, including the matters personally submitted by appellant pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), we note that the convening authority took action 417 days after the sentence was adjudged. Although we find no due process violation in the post-trial processing of appellant's case, we must still review the appropriateness of the sentence in light of the unjustified dilatory post-trial processing. UCMJ art. 66(c); *United States v. Tardif*, 57 M.J. 219, 224 (C.A.A.F. 2002) (“[Pursuant to Article 66(c), UCMJ, service courts are] required to determine what findings and sentence ‘should be approved,’ based on all the facts and circumstances reflected in the record, including the unexplained and unreasonable post-trial delay.”). See generally *United States v. Toohey*, 63 M.J. 353, 362-63 (C.A.A.F. 2006); *United States v. Ney*, 68 M.J. 613, 617 (Army Ct. Crim. App. 2010); *United States v. Collazo*, 53 M.J. 721, 727 (Army Ct. Crim. App. 2000). The government has not explained the reasons for the post-trial delay, either with a memorandum from the

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staff judge advocate or an affidavit attached to the government's brief. Given this unexplained and unreasonable delay, we grant 30 days of sentence credit as a remedy.

The findings of guilty as approved by the convening authority are **AFFIRMED**. We affirm only so much of the sentence as extends to a bad-conduct discharge, confinement for 120 days, and reduction to the grade of E-1. All rights, privileges, and property, of which appellant has been deprived by virtue of this decision setting aside the findings and sentence are ordered restored. *See* UCMJ arts. 58a(b), 58b(c), and 75(a).



FOR THE COURT:

A handwritten signature in black ink, which appears to read "Malcolm H. Squires, Jr.", is written over the printed name.

MALCOLM H. SQUIRES, JR.  
Clerk of Court