

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
CAMPANELLA, HERRING, and PENLAND
Appellate Military Judges

UNITED STATES, Appellee
v.
Specialist DALLAS R. SUTTON
United States Army, Appellant

ARMY 20150268

Headquarters, 1st Cavalry Division
Rebecca K. Connally, Military Judge
Colonel Alison C. Martin, Staff Judge Advocate (pretrial)
Lieutenant Colonel Oren H. McKnelly, Staff Judge Advocate (post-trial)

For Appellant: Colonel Mary J. Bradley, JA (on brief); Major Christopher D. Coleman, JA.

For Appellee: Colonel Mark H. Sydenham, JA; Lieutenant Colonel A.G. Courie III, JA; Major Cormac M. Smith, JA; Captain Cassandra M. Resposo, JA (on brief).

30 November 2016

SUMMARY DISPOSITION

HERRING, Judge:

Where the government is responsible for two-hundred and thirty-nine days elapsing between sentencing and action and forty-three days elapsing between the convening authority's action and docketing with this court, we grant relief.

A military judge sitting as a general court-martial convicted appellant, pursuant to his pleas, of violating a general regulation, flight from apprehension, resisting apprehension, drunken operation of a vehicle, and assault consummated by battery in violation of Articles 92, 95, 111, and 128, Uniform Code of Military Justice, 10 U.S.C. §§ 892, 895, 911, 928 (2012) [hereinafter UCMJ]. The convening authority approved the adjudged sentence of a bad-conduct discharge, confinement for seven months, and reduction to the grade of E-1.

This case is before us for review pursuant to Article 66, UCMJ. Appellant raises two allegations of error, one of which merits brief discussion and relief.

LAW AND DISCUSSION

The convening authority took action two hundred and fifty-eight days after the sentence was adjudged, and it took forty-three additional days after convening authority action for this court to receive the record of trial and docket appellant's case.¹ The government's post-trial delay, was recounted, but not explained, in an affidavit by the 1st Cavalry Division's Chief of Military Justice. The affidavit did not address the forty-three days it took to mail the three-volume record of trial to this court.² Appellant submitted his brief alleging, *inter alia*, post-trial delay nearly five months after his case was docketed. The government filed its brief nearly four months later.

There is a presumption of unreasonable delay where the convening authority's action is not taken within 120 days of the completion of trial and where a record of trial is not docketed by the service Court of Criminal Appeals within thirty days of the convening authority's action. *United States v. Moreno*, 63 M.J. 129, 142 (C.A.A.F. 2006). Post-trial delay in the administrative handling and forwarding of the record of trial and related documents to an appellate court is the "least defensible" type of post-trial delay and "worthy of the least patience." *United States v. Dunbar*, 31 M.J. 70, 73 (C.M.A. 1990).

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 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 *United States v. Collazo*, 53 M.J. 721, 727 (Army Ct. Crim. App. 2000). We find relief from this court is appropriate. As such we provide relief in our decretal paragraph.

¹ While the due date for appellant's matters pursuant to Rule for Court Martial [hereinafter R.C.M.] 1105 was 10 December 2015 and defense counsel submitted these matters nineteen days past the due date, appellant states the defense was responsible for twenty-four days of post-trial delay using a chart that is mostly outdated after this court's decision in *United States v. Banks*, 75 M.J. 746 (Army Ct. Crim. App. 2016). Post *Banks*, the relevant time periods for calculating post-trial delay are between: completion of court-martial, convening authority's action, and docketing with this court, plus up to twenty days past the due date for R.C.M. 1105 matters, if requested by defense.

² We invite the 1st Cavalry Division Office of the Staff Judge Advocate's attention to Army Reg. 27-26, Rules of Professional Conduct for Lawyers, Appx. B. R. 5.3 (Responsibilities Regarding Nonlawyer Assistants), R. 3.2 (Expediting Litigation), and R. 1.3 (Diligence) (1 May 1992).

CONCLUSION

Upon consideration of the entire record, the findings of guilt are **AFFIRMED**. Given the dilatory post-trial processing, we affirm only so much of the sentence as extends to a bad-conduct discharge, 201 days confinement, and reduction to the grade of E-1. 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. *See* UCMJ arts. 58b(c), and 75(a).

Senior Judge CAMPANELLA and Judge PENLAND concur.



FOR THE COURT:

A handwritten signature in black ink, which appears to read "Malcolm H. Squires, Jr.".

MALCOLM H. SQUIRES, JR.
Clerk of Court