

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
TOZZI, CAMPANELLA, and CELTNIIEKS
Appellate Military Judges

UNITED STATES, Appellee
v.
Sergeant JASON M. INGLE
United States Army, Appellant

ARMY 20121022

Headquarters, Joint Readiness Training Center and Fort Polk
James L. Varley, Military Judge
Colonel Keith C. Well, Staff Judge Advocate (pretrial)
Colonel Samuel A. Schubert, Staff Judge Advocate (post-trial)

For Appellant: Mr. Frank J. Spinner, Esquire (argued); Captain Patrick J. Scudieri, JA; Mr. Frank J. Spinner, Esquire (on brief).

For Appellee: Captain Anne C. Hsieh, JA (argued); Colonel Mark H. Sydenham, JA; Major A.G. Courie III, JA; Major Steven J. Collins, JA; Captain Anne C. Hsieh, JA (on brief).

18 November 2015

SUMMARY DISPOSITION

CAMPANELLA, Judge:

A military judge sitting as a general court-martial convicted appellant, contrary to his pleas, of one specification of rape, one specification of attempted rape, one specification of wrongful sexual contact, one specification of maltreatment, two specifications of assault consummated by battery, and one specification of adultery in violation of Articles 120, 80, 93, 128, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 920, 880, 893, 928, and 934 [hereinafter UCMJ]. The military judge sentenced appellant to a dishonorable discharge, twenty years confinement, forfeiture of all pay and allowances, and reduction to the grade of E-1. The convening authority approved the sentence as adjudged.

This case is before us for review pursuant to Article 66, UCMJ. Appellant raises four assignments of error, one of which warrants discussion and relief. We

find the issues raised by appellant pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982) are meritless.

LAW AND DISCUSSION

The convening authority took action 398 days after the sentence was adjudged. The record in this case consists of seven volumes, and the trial transcript is 750 pages. During an eleven month period, appellant submitted six requests for speedy post-trial processing. 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 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 argues this was a complicated court-martial involving multiple victims, and the post-trial processing time was affected by a post-trial session held months after the trial, which took the case off the transcription docket. Accordingly, the delay was not so “egregious under the totality of the circumstances as to render appellant’s otherwise appropriate sentence inappropriate.” *United States v. Garman*, 59 M.J. 400, 678 (C.A.A.F. 2004).

The record reflects, however, that on 1 April 2013, six and one-half months after the conclusion of the court-martial, the court reporter informed the military judge during the post-trial hearing that transcription for appellant’s case had not yet begun. He also informed the military judge he thought it would be transcribed “within the next two months.” On 2 April 2013, the military judge issued a ruling on defense’s post-trial motion. Accordingly, we do not find the post-trial session had any bearing upon the delay in transcription. Despite the government’s arguments, relief in this case is appropriate as the delay between announcement of sentence and action could “adversely affect the public’s perception of the fairness and integrity of military justice system” *Ney*, 68 M.J. at 617. As such, we provide relief in our decretal paragraph.

CONCLUSION

Upon consideration of the entire record, the findings of guilty are **AFFIRMED**. Given the dilatory post-trial processing, we affirm only so much of the sentence as extends to a dishonorable discharge, nineteen years and eleven months confinement, forfeiture of all pay and allowances, and reduction to the grade of E-1.

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All rights, privileges, and property, of which appellant has been deprived by virtue of this decision setting aside portions of his sentence are ordered restored. *See* UCMJ arts. 58b(c), and 75(a).

Senior Judge TOZZI and Judge CELTNIIEKS concur.



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