

**IN THE U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS  
WASHINGTON NAVY YARD  
WASHINGTON, D.C.**

**BEFORE**

**W.L. RITTER**

**J.F. FELTHAM**

**E.S. WHITE**

**UNITED STATES**

**v.**

**Vincent T. AMOS  
Yeoman Seaman (E-3), U.S. Navy**

NMCCA 200600769

Decided 8 May 2007

Sentence adjudged 19 June 2000. Military Judge: C.R. Hunt.  
Review pursuant to Article 66(c), UCMJ, of Special Court-Martial  
convened by Commanding Officer, Air Test and Evaluation Squadron  
NINE, Naval Air Weapons Station, China Lake, CA.

LtCol KEVIN CONWAY, USMCR, Appellate Defense Counsel  
LCDR ROSS WEILAND, JAGC, USN, Appellate Government Counsel  
LT JESSICA M. HUDSON, JAGC, USN, Appellate Government Counsel

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.

RITTER, Senior Judge:

A military judge sitting as a special court-martial convicted the appellant, pursuant to his pleas, of two specifications of failure to obey a lawful order, drunk and disorderly conduct on divers occasions, indecent language, and two specifications of unlawful entry. His offenses violated Articles 92 and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 892 and 934. The appellant was sentenced to confinement for 90 days, reduction to pay grade E-1, forfeiture of \$670.00 pay per month for four months, and a bad-conduct discharge. The convening authority approved the adjudged sentence.

We have carefully examined the record of trial, the appellant's sole assignment of error alleging unreasonable post-trial delay, and the Government's response. We find that the appellant was denied his right to a timely post-trial processing of his case. Following our remedial action, we conclude that the findings and modified sentence are correct in law and fact

and that no other error materially prejudicial to the substantial rights of the appellant was committed. See Arts. 59(a) and 66(c), UCMJ.

### **Post-Trial Delay**

The appellant contends that the delay in the post-trial processing of his case warrants relief. We consider four factors in determining if post-trial delay violates the appellant's due process rights: (1) the length of the delay; (2) the reasons for the delay; (3) the appellant's assertion of the right to a timely appeal; and (4) prejudice to the appellant. *United States v. Jones*, 61 M.J. 80, 83 (C.A.A.F. 2005) (citing *Toohey v. United States*, 60 M.J. 100, 102 (C.A.A.F. 2004)). If the length of the delay is not unreasonable, further inquiry is not necessary. If we conclude that the length of the delay is "facially unreasonable," however, we must balance the length of the delay against the other three factors. *Id.* Moreover, in extreme cases, the delay itself may "give rise to a strong presumption of evidentiary prejudice." *Id.* (quoting *Toohey*, 60 M.J. at 102).

Here, there was a delay of just under six years, or 2,119 days, from the date of trial to the date the case was docketed at this court. Although the convening authority acted on a clemency request by the civilian defense counsel on 1 November 2000, the staff judge advocate's recommendation and convening authority's action were not completed in this case until about five and one-half years later. This case was tried prior to the date our superior court decided *United States v. Moreno*, 63 M.J. 129 (C.A.A.F. 2006), so the presumptions of unreasonable delay that apply to post-trial processing prior to docketing by this court do not apply here. Nevertheless, we find that the delay in this case was facially unreasonable, triggering a due process review.

Regarding the second factor, the record contains no explanation for nearly six years of post-trial processing delay. Looking to the third factor, we find no assertion of the right to a timely appeal until nearly six years after trial, when the civilian defense counsel finally protested the delay in a letter to the convening authority.

As for the fourth factor, prejudice, the appellant submitted a declaration claiming that he was denied a higher paying job at a company in Bethel, Alaska, because he did not have his Form DD-214 discharge certificate, but that he was

hired for a lower paying job with the same company. He also claims he was dismissed from a second job after six months because he could not provide a DD-214. Finally, he claims in general terms that he has been denied the opportunity to apply for unspecified higher-paying jobs because he cannot provide a DD-214.

In *Jones*, our superior Court found prejudice where the appellant submitted not only his own declaration, but declarations from three employees of a company verifying that the appellant would have either been hired or at least seriously considered for employment had he been able to present documentation concerning his discharge from the military. Here, the appellant has not provided any evidence to support his declaration. Furthermore, the declaration itself lacks sufficient detail to permit the Government an opportunity to verify or rebut his claims. As our superior court stated in *United States v. Dunbar*, 31 M.J. 70, 73 (C.M.A. 1990), "relief may not be predicated upon claims of prejudice that are unverified and unverifiable. The burden rests with appellant."

We find the appellant's unsupported allegations of prejudice both speculative and conclusory, and reject his claim of prejudice on that basis, without ordering a factfinding hearing. See *United States v. Ginn*, 47 M.J. 236, 248 (C.A.A.F. 1997). We do so because the appellant did not provide any evidence to verify his claims or, at the very least, specific information about the alleged denials of employment and the termination from one job, to include contact information sufficient to permit the Government an opportunity to verify or rebut his claims.

We thus find no specific prejudice resulting from the post-trial delay in this case. We also find no "extreme circumstances" that give rise to a strong presumption of evidentiary prejudice.

However, after balancing all four factors, we conclude that the post-trial delay violated the appellant's due process rights. *Jones*, 61 M.J. at 83. We view the extraordinarily long period of delay and the lack of any explanation by the Government as the weightiest factors in our analysis of this issue.<sup>1</sup> We also

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<sup>1</sup>We understand the Government's reluctance to offer explanations that fall short of justification for delay. In this case, with a delay of six years, we presume any explanation would indicate gross negligence by one or more Government actors. But without **any** explanation, we cannot rule out willful dereliction or other forms of bad faith by Government actors. Under such

note the appellant's declaration sets forth facts which, if verified or verifiable, would establish prejudice from the facially unreasonable post-trial delay.

In tailoring an appropriate remedy, we are mindful of the serious offenses committed by the appellant and what we view as a relatively lenient sentence received at trial, as well as the extraordinary length of the unexplained post-trial delay. Having considered the totality of the circumstances and the types of relief that may be appropriate, we conclude that providing relief on forfeitures is sufficient in this case. Due to the seriousness of the appellant's offenses, we conclude that additional relief would be disproportionate to the possible harm generated by the delay.

We are also aware of our authority to grant relief under Article 66, UCMJ, but we decline to grant additional relief on that basis. *Toohy*, 60 M.J. at 102; *United States v. Tardif*, 57 M.J. 219, 224 (C.A.A.F. 2002); *United States v. Brown*, 62 M.J. 602 (N.M.Ct.Crim.App. 2005)(en banc).

#### **Error in Staff Judge Advocate's Recommendation**

Although we agree with counsel's decision not to raise this as an assignment of error, we note that the staff judge advocate's recommendation (SJAR) failed to apprise the convening authority of the military judge's conditional recommendation of clemency. This was error. RULE FOR COURTS-MARTIAL 1106(d)(3)(B), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2005 ed.); see *United States v. Lee*, 50 M.J. 296, 297 (C.A.A.F. 1999). However, the civilian defense counsel did not object to this error, and the appellant does not allege error on appeal. Thus, the appellant has not made a colorable showing of possible prejudice, and no remedial action is required on this basis. *United States v. Kho*, 54 M.J. 63, 65 (C.A.A.F. 2000); *United States v. Wheelus*, 49 M.J. 283, 289 (C.A.A.F. 1998).

Finally, as an administrative matter, we note the court-martial promulgating order sets forth the pleas and findings for the charges, but does not clearly do so for the underlying specifications. We will order corrective action in our decretal paragraph.

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circumstances, the second factor weighs even more heavily for the appellant than would be the case with an explanation, however weak, that falls short of bad faith.

### **Conclusion**

Accordingly, we affirm the findings of guilty and only so much of the sentence as provides for confinement for 90 days, reduction to pay grade E-1, and a bad-conduct discharge. The supplemental court-martial order shall state the pleas and findings as to each specification under the charges.

Judge FELTHAM and Judge WHITE concur.

For the Court

R.H. TROIDL  
Clerk of Court