

**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.**

**Christopher A. GREATTING  
Staff Sergeant (E-6), U. S. Marine Corps**

NMCCA 200401945

Decided 29 March 2007

Sentence adjudged 31 October 2003. Military Judge: R.S. Chester. Review pursuant to Article 66(c), UCMJ, of General Court-Martial convened by Commanding General, Marine Corps Base, Camp Pendleton, CA.

LCDR M. ERIC EVERSOLE, JAGC, USN, Appellate Defense Counsel  
LT JENNIE GOLDSMITH, JAGC, USN, Appellate Defense Counsel  
LCDR R.W. SARDEGNA, JAGC, USN Appellate Government Counsel

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.

FELTHAM, Judge:

A military judge, sitting as a general court-martial, convicted the appellant, pursuant to his pleas, of conspiracy, violating a lawful general order, signing false official documents, making a false official statement, and wrongful use of marijuana, in violation of Articles 81, 107, and 112a, Uniform Code of Military Justice, 10 U.S.C. §§ 881, 907, and 912a. The convening authority approved the adjudged sentence of confinement for six months, reduction to pay grade E-1, and a bad-conduct discharge, but, in an act of clemency, suspended all confinement in excess of 90 days.

The appellant now claims: (1) a sentence that includes an unsuspended bad-conduct discharge is inappropriately severe, given his record of service, his character, and the nature of his crimes; (2) his right to speedy review of his court-martial was materially prejudiced by unreasonable post-trial delay; and (3) the military judge abused his discretion when he denied the appellant's motion to recuse himself from the case.

We have carefully considered the record of trial, the appellant's assignments of error, and the Government's response. We conclude that the findings and sentence are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant was committed. See Arts. 59(a) and 66(c), UCMJ.

### **Impartiality of the Military Judge**

During voir dire, the military judge said he had presided over four companion cases, each of which involved guilty pleas supported by stipulations of fact. In response to questions from the appellant's civilian defense counsel, he acknowledged having a sense of some of the events surrounding the charges in the appellant's case, but said, "I can't recall specifically each case and whether each case touched on Staff Sergeant Greatting." Record at 18.

When asked if his knowledge of the companion cases gave him a preconceived opinion as to the appellant's culpability, the military judge answered:

I'm not sure how to answer that. I can't recall specifically each case and whether each case touched on Staff Sergeant Greatting.

If I had to say, my recollection was that Staff Sergeant Cadriel [the accused in one of the companion cases] had a greater involvement in what was going on, although some of the charges which aren't here today, the accused is not going to plead guilty to today, involved drinking in the work spaces; and I believe Staff Sergeant Greatting was implicated in those cases that involved that allegation and was implicated in those as having approved that conduct as well as the falsification of certain records, the failure to train dogs and test them to certain standards.

*Id.* at 18.

In response to additional voir dire questions, the military judge said he could not recall the degree to which evidence in the companion cases implicated the appellant in charges pertaining to obstruction of justice. He added that in the event conflicts arose between the evidence in the appellant's case and evidence in the companion cases, he would disregard his recollection of the companion cases, stating, "I decide a case based on what I hear in court for that particular case not the generalized knowledge that might be out there or I may have heard." *Id.* at 19.

The military judge acknowledged giving post-trial critiques to the counsel in the companion cases, and said he had discussed the companion cases with the cognizant staff judge advocate and

possibly the deputy staff judge advocate. When asked about the focus of this discussion, he replied:

With respect to Cadriel, it was that I thought they sold the case too low given his culpability, his admissions in the Court, given the severity of his conduct, and the repercussions of his conduct on the junior Marines that were involved in the section, the security of this installation.

*Id.* at 21.

With regard to Staff Sergeant Cadriel, the military judge stated, "[T]hat I felt given the level of culpability of Cadriel versus the younger Marines who were perhaps more guided or motivated by misguided loyalty to the two staff NCO's that they worked for, I questioned the appropriateness of their being at a special court-martial." *Id.* at 21.

When asked if his recollection of the pretrial agreement in the case of *United States v. Cadriel* would influence the sentence in the appellant's case, the military judge replied, "No, I understand there is a pretrial agreement in this case and I make no effort to try to second guess or presuppose what that pretrial agreement might provide for." *Id.* at 22. In addition, he stated, "I adjudge a sentence that I think is appropriate based on the conduct of the accused and the other factors that are presented relative to sentencing." *Id.* Later he indicated he had no preconceived idea as to an appropriate sentence in the appellant's case, and said, "I don't know what the facts are yet, but I have no question that I can sit here and decide this case based on what's introduced here in this courtroom and not what happened in the other trials." *Id.* at 23.

The appellant's civilian defense counsel then asked the military judge to recuse himself on the grounds of apparent bias under RULE FOR COURTS-MARTIAL 902(a), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2002 ed.), and *United States v. Jarvis*, 46 C.M.R. 260 (C.M.A. 1973), stating: "I believe those grounds exist given your previous extensive exposure to the related cases and the nature of that exposure. *Jarvis* indicated that presiding over a companion case in which the accused was heavily involved, and was a basis for doing that. I do note that in *Jarvis* there is another issue involved in *Jarvis*, and that was ineptness of counsel and I believe it does stand for that proposition." *Id.* at 23-24.

The military judge denied the request to recuse himself. The appellant now claims this was an abuse of discretion, and contends that the military judge's "advocacy" prejudiced the convening authority against him.

The fact is, nearly five months after SSgt Cadriel's court-martial and as a result of the military judge's influence, the convening authority treated Appellant much more harshly than the other dog handlers, including SSgt Cadriel. While SSgt Cadriel received a pre-trial agreement that capped confinement at seventy-five days, Appellant received a deal capping confinement at fifteen months. Clearly, the military judge's influence impacted the deal negotiated by the convening authority with Appellant.

Appellant's Brief of 23 Feb 2006 at 14.

In support of his contention that the military judge prejudiced the convening authority against him, the appellant argues:

First, as evident by the military judge's sentencing of Appellant and SSgt Cadriel, it is clear that the military judge believed that SSgt Cadriel was greatly more culpable than Appellant. In fact, while the military judge sentenced Appellant to six months of confinement, he sentenced SSgt Cadriel to four years of confinement. Second, the convening authority ultimately reached the same conclusion as the military judge when he released Appellant from confinement after three months. Why would the convening authority release Appellant from confinement after three months. [sic] Why would the convening authority release Appellant after three months if he believed that Appellant deserved fifteen months of confinement, as negotiated in the pre-trial agreement? The fact is that the judge's advocacy had an impact on Appellant's case and this impact prejudiced Appellant.

Appellant's Brief at 15.

We find this argument illogical and wholly without merit. It is beyond cavil that the appellant was free to reject any pretrial agreement offer he considered unsuitable. His assertion that the military judge's discussion of companion cases with the staff judge advocate ultimately led to his entering into an unduly harsh pretrial agreement with the convening authority is a *non sequitur*. There is nothing in the record that would lead us to conclude that the appellant signed the pretrial agreement against his will, and nothing that would lead us to conclude that the military judge was prejudiced against him.

A military judge "shall disqualify himself or herself in any proceeding in which that military judge's impartiality might reasonably be questioned," if "the military judge has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding," or "except in the performance of duties as military judge in a previous

trial of the same or a related case, has expressed an opinion concerning the guilt or innocence of the accused." R.C.M. 902(a), (b)(1), and (b)(3). "While military judges are obliged to disqualify themselves when they lack impartiality, they are equally obliged not to disqualify themselves when there is no reasonable basis for doing so." *United States v. Burton*, 52 M.J. 223, 226 (C.A.A.F. 2000)(citing *United States v. Kincheloe*, 14 M.J. 40, 50 n.14 (C.M.A. 1982)).

"There is a strong presumption that a military judge is impartial, and a party seeking to demonstrate bias must overcome a high hurdle, particularly when the alleged bias involves actions taken in conjunction with judicial proceedings." *United States v. Quintanilla*, 56 M.J. 37, 44 (C.A.A.F. 2001). When a military judge's impartiality is questioned on appeal, the legal test is whether, taken as a whole in the context of the trial, the legality, fairness, or impartiality of the court-martial was put into doubt by the military judge's actions. *Burton*, 52 M.J. at 226. "This test is applied from the viewpoint of the reasonable person." *United States v. Ramos*, 42 M.J. 392, 396 (C.A.A.F. 1995).

Applying the above principles to the appellant's case, we hold that the military judge was not disqualified. The appellant requested a bench trial, aware of the identity of the military judge. He persisted in this choice, even after the military judge denied his request for recusal. The military judge's answers during voir dire reflected his recollection of companion cases, and acknowledged his discussion of those cases with the staff judge advocate, but did not reveal any personal bias against the appellant, or reflect an inflexible predisposition to adjudge a particular sentence. In fact, although the trial counsel argued for a sentence that included two years confinement, the military judge imposed only six months confinement.

In addition, after a thorough providence inquiry, the military judge properly rejected, as improvident, the appellant's guilty plea to obstruction of justice. During sentencing, he twice overruled Government objections to the testimony of defense extenuation and mitigation witnesses. When asked by the appellant's civilian defense counsel to take judicial notice of a Secretary of the Navy Instruction concerning clemency and parole, the military judge asked the appellant's counsel to direct his attention to the specific portions of the instruction the defense wanted him to consider, and then allowed the counsel to explain the relevance of those provisions. Finally, when it became apparent that the appellant's civilian defense counsel had incorrectly advised the appellant about the sentence limitation portion of his pretrial agreement, the military judge asked the appellant a series of questions to ensure he thoroughly understood the pretrial agreement, and still wished to be bound by it.

Having reviewed the record, we conclude that a reasonable person observing the appellant's court-martial would not have doubted the military judge's impartiality or the legality and fairness of the trial. Therefore, we hold that the military judge did not abuse his discretion.

### **Sentence Severity**

The appellant contends the adjudged bad-conduct discharge is inappropriately severe given his record of service, his character, and the nature of his crimes. We disagree.

"Sentence appropriateness involves the judicial function of assuring that justice is done and that the accused gets the punishment he deserves." *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988). This requires "'individualized consideration' of the particular accused 'on the basis of the nature and seriousness of the offense and character of the offender.'" *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982)(quoting *United States v. Mamaluy*, 27 C.M.R. 176, 180-81 (C.M.A. 1959)).

At the time of the offenses, the appellant was a military policeman and a staff sergeant in the Marine Corps. He was the Staff Noncommissioned Officer-in-Charge of the K9 section for Marine Corps Base Camp Pendleton, with up to 17 dogs and 19 Marines under his supervision. He was responsible for ensuring that dogs and dog handlers were properly trained, that proper records of the training were kept, and that the kennels were run according to U.S. Marine Corps and U.S. Navy standards.

The appellant was convicted of conspiring with subordinates to not properly train the dogs, to conceal unauthorized dogs in the kennels, to make and submit false training records for the dogs, and to steal food and kennel services that belonged to the Government. To effect the object of the conspiracy, the appellant and his subordinates failed to train and certify dogs according to standards, actively concealed the presence of unauthorized non-military dogs in the kennels from military and/or veterinary personnel, prepared and submitted false dog training records, and permitted the feeding, caring, and quartering of non-military dogs in and around the kennels.

The appellant violated a lawful general order by harboring a non-military attack dog in and around the kennels. This dog was a gift to the kennels from the Los Angeles Police Department, but was not authorized to be kept in the kennels pursuant to the general order. The dog was aggressive, bit Marines that attempted to control it, and was eventually severely injured by Marines attempting to control it while removing it from a vehicle. As a result of its injuries, a decision was made to put the dog down. Two of the appellant's subordinates then killed it.

From about 1 July 2001 to about 28 August 2002, the appellant purposely made, or directed others to make, false

official records concerning the training and certification of drug dogs and bomb dogs. As a result of these falsifications, all 17 of Camp Pendleton's K9 dogs were decertified, which precluded their being used in real world missions. They had to be replaced with other dogs, and sent to San Antonio, Texas, for retraining. The resulting transportation expenses cost the Marine Corps approximately \$6,000.

On or about 15 February 2001, the appellant smoked marijuana at the home of a friend in San Diego, California. On or about 29 August 2002, he lied to agents of the Naval Criminal Investigative Service when they questioned him about the whereabouts of the attack dog killed by his subordinates.

We have carefully considered the appellant's long and honorable service, as well as the extensive evidence presented on his behalf during sentencing. Nonetheless, his misconduct was extremely serious. His crimes involved a fellow staff sergeant and numerous subordinate Marines. The staff sergeant was convicted of related offenses at a general court-martial, and three subordinate Marines received special court-martial convictions. Other subordinates received nonjudicial punishment.

After reviewing the entire record, we find that the sentence is appropriate for this offender and his offenses. *United States v. Baier*, 60 M.J. 382 (C.A.A.F. 2005); *Healy*, 26 M.J. at 395-96; *Snelling*, 14 M.J. at 268. Granting sentence relief at this juncture would be to engage in clemency, a prerogative reserved for the convening authority. *Healy*, 26 M.J. at 395-96. We reject this assignment of error.

### **Post-Trial Delay**

The appellant claims his right to speedy post-trial review has been materially prejudiced by unreasonable delay in the post-trial processing of his case.

We consider four factors in determining if post-trial delay violates an 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, the appellant argues: "The 462-day delay between the adjournment of the trial and the docketing of a complete and properly processed record of trial with this Court is patently

unreasonable." Appellant's Brief of 23 Feb 2006 at 7. He further contends:

In particular, the 200-day delay between trial counsel's review of the record of trial and the staff judge advocate's preparation of the SJAR, as well as an additional 53-day delay to service [sic] the SJAR on defense counsel, are grossly excessive. The combined delay of 381 days--well over one year--to prepare and transmit the record of trial and SJAR is per se unreasonable. In addition, the failure to properly allocate Government resources resulted in Appellant's case languishing for an additional 355 days until a new substitute appellate defense counsel was assigned to contact Appellant and submit a brief and assignment of errors.

*Id.* at 7-8.

The appellant's case was both tried and docketed at this court 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 set forth in that case 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, reasons for the delay, the staff judge advocate's recommendation contains the following explanation:

The delay in processing this case was partially a result of operational requirements of Operation Iraqi Freedom and Operation Enduring Freedom. Due to these operations, the manpower required to prepare the large volume of courts-martial for convening authority's action was significantly reduced at Camp Pendleton. Additional delay was caused as a result of the increased volume of cases at Marine Corps Base, Camp Pendleton precipitated by the memorandum of agreement between the Commanding General, 1st Marine Division and the Commanding General, Marine Corps Base, requiring the Commanding General, Marine Corps Base to process all courts-martial cases for 1st Marine Division units deployed in support of these operations.

Staff Judge Advocate's Recommendation of 23 Sep 2004 at 5.

Although the appellant's civilian defense counsel did not dispute the accuracy of this explanation in his 16 November 2004 response to the staff judge advocate's recommendation, we nonetheless find that the explanation lacks sufficient specificity for us to conclude that these operational commitments, and their associated administrative problems, directly impacted the post-trial processing of the appellant's case.

Looking to the third and fourth factors, the appellant concedes that he did not assert his right to a timely appeal prior to filing his brief before this court. With respect to the fourth factor, we have considered the appellant's unsworn declaration of 31 August 2006, in which he states he applied for employment with the Buckeye Police Department in Buckeye, Arizona, but was unable to continue the process due to lack of a DD-214.

Although the appellant's declaration is uncorroborated, there is nothing in the record to suggest that any part of it is false. In it, the appellant claims to have applied for employment with the Buckeye Police Department in January 2006. He says he passed written and physical exams, as well as a board interview, and indicates the hiring coordinator for the Buckeye Police Department told him his bad-conduct discharge would not disqualify him from employment, but that he could not continue the application process until he received his DD-214. The Government presented no information to rebut the declaration.

In *Jones*, our superior court held that interference with the opportunity to be considered for employment constitutes prejudice for purposes of the fourth due process factor. *See Jones*, 61 M.J. at 85. Although the appellant's evidence of prejudice is not as extensive as that in *Jones*, his declaration nonetheless contains sufficient detail to have afforded the Government an opportunity to rebut it. There being no such rebuttal in the record, we find the appellant has demonstrated prejudice from the delay. Balancing all four factors, we hold that the appellant was denied his due process right to a timely review and appeal. Having reached this conclusion, we decline to afford additional relief.

We have considered the types of relief that might be appropriate here, as well as the totality of the circumstances. The appellant has already served his full 90-day term of unsuspended confinement, and the 12-month suspension period that applied to the suspended confinement has expired. Therefore, reduction of the confinement or confinement credits would afford the appellant no meaningful relief. Disapproval of the reduction to pay grade E-1 would have no meaningful effect in light of the applicable provisions for automatic reduction. Reducing the period of confinement enough to impact upon the automatic forfeiture of pay, or disapproving the bad-conduct discharge for the same purpose, would result in a dramatic windfall to the appellant, which is not warranted under the circumstances of this case. Setting aside any of the findings of guilty would likewise result in an unwarranted windfall. We conclude, therefore, that there is no reasonable, meaningful relief available to the appellant, and decline to afford additional relief beyond the clemency already granted by the convening authority. *See United States v. Rodriguez-Rivera*, 63 M.J. 372, 386 (C.A.A.F. 2006).

We have also considered the appellant's contention that his case merits discretionary relief under Article 66, UCMJ. But

after weighing the post-trial delay in light of the factors we noted in *United States v. Brown*, 62 M.J. 602 (N.M.Ct.Crim.App. 2005)(en banc), we do not consider discretionary relief appropriate in this case. *Toohey*, 60 M.J. at 102; *United States v. Tardif*, 57 M.J. 219, 224 (C.A.A.F. 2002).

### **Conclusion**

Accordingly, we affirm the findings of guilty and the sentence, as approved by the convening authority.

Senior Judge RITTER and Judge WHITE concur.

For the Court

R.H. TROIDL  
Clerk of Court