

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

BEFORE

E.E. GEISER

F.D. MITCHELL

J.G. BARTOLOTTA

UNITED STATES

v.

**Mitchell J. LARAMORE
Corporal (E-4), U.S. Marine Corps**

NMCCA 200601023

Decided 12 June 2007

Sentence adjudged 17 December 2004. Military Judge: M.B. Richardson. Review pursuant to Article 66(c), UCMJ, of General Court-Martial convened by Commanding General, 2d Marine Aircraft Wing, Cherry Point, NC.

LtCol JOHN HOGAN, USMCR, Appellate Defense Counsel
Maj KEVIN HARRIS, USMC, Appellate Government Counsel

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.

MITCHELL, Judge:

The appellant was convicted, pursuant to his pleas, by a military judge sitting as a general court-martial, of unpremeditated murder and communicating a threat, in violation of Articles 118 and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 918 and 934. He was sentenced to confinement for 40 years, forfeiture of all pay and allowances, reduction to pay grade E-1, and a dishonorable discharge. The convening authority approved the sentence as adjudged.

The appellant raises four assignments of error: (1) the convening authority erred in failing to consider the appellant's clemency letter of 6 March 2006 as well as the addendum to the staff judge advocate's recommendation; (2) the appellant's right to a speedy post-trial review was materially prejudiced by unreasonable delay in post-trial processing; (3) the 570-day delay in processing the appellant's case for review was facially unreasonable and warrants relief under Article 66(c), UCMJ; and

(4) the appellant's sentence of 40 years confinement was inappropriately severe.

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

**Convening Authority's Consideration of Clemency Matters and
Addendum to Staff Judge Advocate's Recommendation**

In his initial assignment of error, the appellant contends the convening authority erred in failing to consider the clemency letter submitted by the appellant on 6 March 2006 and the addendum to the staff judge advocate's recommendation, dated 16 March 2006, before taking action. The initial staff judge advocate's recommendation (SJAR) was prepared on 29 December 2005 and the trial defense counsel acknowledged receipt of it on 9 January 2005.¹ The appellant's individual military counsel² submitted a request for clemency on behalf of the appellant on 3 March 2006. On 16 March 2006, the staff judge advocate prepared the addendum to the initial SJAR at issue which contained, *inter alia*, the appellant's clemency request of 6 March 2006 at issue, and a clemency petition of 3 March 2006 submitted by the appellant's individual military counsel. On 30 March 2006, the appellant's individual military counsel and his detailed defense counsel each submitted a response to the SJAR addendum which contained additional clemency matters. The SJAR addendum specifically advises the convening authority to "carefully consider the contents of this [clemency] letter, along with other clemency matters submitted by the accused or his counsel." Addendum to SJAR at 4.

We agree the convening authority must consider matters presented by or on behalf of an accused. RULE FOR COURTS-MARTIAL 1107(b)(3)(A)(i-iii), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2005 ed.). The appellant's contention in the case *sub judice* is that because the convening authority's action failed to expressly mention consideration of the appellant's 6 March 2006 letter or

¹This is an apparent scrivener's error, as the date should have read 9 January 2006.

²The appellant was represented by detailed defense counsel and individual military defense counsel.

the addendum to the SJAR,³ we must presume they were not considered. We disagree.

The facts of this case are quite similar to those in *United States v. Stephens*, 56 M.J. 391 (C.A.A.F. 2002). In *Stephens*, our superior court was presented with a situation where clemency materials were submitted to the convening authority as part of an addendum to the SJAR. In *Stephens*, the convening authority failed to mention that he considered the addendum to the SJAR and any clemency matters stating only that he had considered the results of trial, the record of trial, and the staff judge advocate's recommendation. *Id.* at 392. Our superior court noted that neither the UCMJ nor the Rules for Court-Martial require that the convening authority state in the final action what matters were reviewed in reaching a decision.⁴ *Id.* The court declined to find the convening authority's action defective simply because it referred to the SJA's recommendation without also referring to attachments such as an addendum or clemency matters. *Id.*

In the instant case, it is particularly important to note the convening authority's action specifically states, *inter alia*, that the matters submitted by the individual military counsel and the detailed defense counsel in his 30 March 2006 response to the addendum SJAR were considered prior to his taking action. As noted previously, the clemency petition of 3 March 2006 at issue was forwarded to the convening authority as an enclosure to the addendum of the SJAR at issue. We will not conclude, therefore, that the convening authority read only one enclosure of the SJAR addendum package and did not read the addendum SJAR or the other enclosures, including the appellant's letter of 6 March 2006. We cannot envision the convening authority reading the responses to the SJAR addendum and not reading the addendum itself.

³The convening authority's action specifically states he considered "the recommendation of the Staff Judge Advocate, the clemency matters submitted by the individual military counsel on 3 March 2006 and 30 March 2006, and the clemency matters submitted by the detailed defense counsel on 30 March 2006 prior to taking action." Convening Authority's Action of 10 Apr 2006 at 2.

⁴We note that unlike in *Stephens*, the convening authority in this case mentioned specific clemency petitions that he considered (the two clemency petitions submitted on 30 March 2006 as well as the petition submitted by the IMC on 3 March 2006). While the convening authority did not specifically mention considering the addendum to the SJAR or the attached clemency petition, we note that the addendum in question and the clemency petition were in the record of trial, as were the two 30 March 2006 responses to the addendum, which responses were specifically mentioned in the convening authority's action as having been considered prior to taking action.

Finally, in the present case, the Government has provided an affidavit from an officer assigned to the Joint Law Center, MCAS Cherry Point, North Carolina attesting to having sent the complete record of trial including the SJAR and the addendum to the convening authority for his specific consideration prior to taking action. The convening authority specifically stated that the record of trial was considered prior to taking action. While the language of the convening authority's action could have been more specific, we find nothing to suggest the appellant's clemency letter of 6 March 2000 and the addendum to the SJAR were not considered prior to the convening authority taking action in the appellant's case. We find this assignment of error to be without merit.

Post-Trial Delay

In the second and third assignments of error, the appellant avers that his right to a speedy post-trial review was materially prejudiced by unreasonable delay in post-trial processing and the 570-day delay from the date of sentencing until this case was docketed with this court was facially unreasonable and warrants relief under Article 66(c), UCMJ.

We have considered the record of trial, these two assignments of error, and the Government's response. In light of *United States v. Moreno*, 63 M.J. 129 (C.A.A.F. 2006), and *United States v. Allison*, 63 M.J. 365 (C.A.A.F. 2006), we assume without deciding that the appellant was denied his due process right to speedy post-trial review and appeal. We conclude however, that any error in that regard was harmless beyond a reasonable doubt. We additionally find the delay does not affect the findings and sentence that should be approved in this case. *United States v. Brown*, 62 M.J. 602 (N.M.Ct.Crim.App. 2005) (*en banc*).

Sentence Appropriateness

Finally, the appellant argues that a sentence of 40 years confinement is inappropriately severe and requests ten years of this sentence be suspended.⁵ Appellant's Brief of 14 Dec 06 at 15-16. We have considered the appellant's record, his clemency petitions, and the entire record of trial. We have also

⁵We note that under Article 66(c), UCMJ, we do not have the power to independently suspend part of a sentence. We may only affirm all or part of the sentence as we find correct in law and fact, based on the entire record that, should be approved.

considered the seriousness of his offenses which included the unpremeditated murder of a junior Marine.

After reviewing the entire record, we find that the sentence is appropriate for the offender and his offenses. *United States v. Baier*, 60 M.J. 382, 384-85 (C.A.A.F. 2005); *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988); *United States v. Snelling*, 14 M.J. 267, 268, 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)).

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

Senior Judge GEISER and Judge BARTOLOTTA concur.

For the Court

R.H. TROIDL
Clerk of Court