

**UNITED STATES NAVY-MARINE CORPS
COURT OF CRIMINAL APPEALS
WASHINGTON, D.C.**

**Before
L.T. BOOKER, J.R. PERLAK, M. FLYNN
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**MICHAEL S. VINCENT
CHIEF DISBURSING CLERK (E-7), U.S. NAVY**

**NMCCA 200900477
GENERAL COURT-MARTIAL**

Sentence Adjudged: 10 November 2005.

Military Judge: CAPT Donald Sherman, JAGC, USN.

Convening Authority: Commander, Navy Region Northwest,
Silverdale, WA.

Staff Judge Advocate's Recommendation: CDR L.R. Langevin,
JAGC, USN.

For Appellant: LT Michael Maffei, JAGC, USN.

For Appellee: LtCol John Scott, USMCR; LT Duke Kim, JAGC,
USN.

12 February 2010

OPINION OF THE COURT

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.

PER CURIAM:

A military judge sitting as a general court-martial convicted the appellant, pursuant to his pleas, of two specifications of violating a lawful general regulation, one specification of signing a false official document, three specifications of larceny, and one specification of presenting a fraudulent claim against the United States, violations, respectively, of Articles 92, 107, 121, and 132, Uniform Code of Military Justice, 10 U.S.C. §§ 892, 907, 921, and 932. On 10

November 2005, the military judge announced a sentence of confinement for 18 months, forfeiture of \$1,000.00 pay per month for twenty-nine months, and reduction to pay grade E-5.¹ On 13 June 2006, the convening authority (CA) approved the sentence as adjudged. On 25 August, 2009, the appellant filed a *pro se* motion requesting that this Court either docket his case or dismiss the charges with prejudice. The case was docketed on 15 September 2009 and on 16 September the court denied the appellant's motion to dismiss.

Before this court, the appellant alleges that his due process rights have been violated by the excessive post-trial delays in processing and appellate review of his court-martial, or, alternatively, that relief under Article 66, UCMJ, is warranted due to excessive and unexplained post-trial delay.² In support, the appellant points to the nearly four years (1405 days) between trial and docketing with this court. Appellant's Brief of 13 Nov 2009 at 9, 13. He does not allege any specific prejudice due to that delay. *Id.* at 10, 13. The Government concedes that the delay is facially unreasonable. Government's Answer of 14 Dec 2009 at 6; see also *United States v. Moreno*, 63 M.J. 129, 136 (C.A.A.F. 2006). Notwithstanding that this case was tried prior to *Moreno*, we nonetheless find, consistent with that case, that the unexplained delay in this case, totaling nearly four years between the adjournment of trial and docketing with this court, is unreasonable.

Assuming that the appellant was denied the due process right to speedy post-trial review and appeal, we proceed directly to the question of whether any error was harmless beyond a reasonable doubt. *United States v. Allison*, 63 M.J. 365, 370-71 (C.A.A.F. 2006). Here, there is no evidence of any specific harm resulting from the delay and the appellant has not alleged any such harm. There is no issue that would afford the appellant relief: no oppressive incarceration resulting from the delay, no particularized anxiety caused by the delay, and no rehearing which might be affected by excessive post-trial delay.

¹ In determining an appropriate sentence, the military judge exercised his discretion to merge the violation of Article 107 involving submission of a false page two, with the violation of Article 121, larceny of \$26,963.20, finding that the larceny was based on the misrepresentation of where the appellant's dependents lived. Record at 200. He similarly merged for sentencing purposes the larceny of \$1,522.69 obtained as a result of having submitting a false travel claim with the submission of the false travel claim. *Id.*

² Both assignments of error were raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

See *United States v. Haney*, 64 M.J. 101, 108 (C.A.A.F. 2006); *Moreno*, 63 M.J. at 139. Additionally, we note that the appellant, a chief disbursing clerk, was convicted, pursuant to his pleas, of stealing more than \$28,000.00 of government funds by misrepresenting where his family lived and submitting a false travel claim. In addition, he pled guilty to fraternizing with two subordinates in his chain of command by lending them money and then wrongfully obtaining money from one of those junior enlisted persons by using his position to effectuate an unauthorized payroll deduction. The appellant has not raised any issues regarding the conduct of his trial and, based on the terms of his pretrial agreement, was released from confinement in twelve months.

Under the totality of circumstances in this record, we conclude that the Government has met its burden to show that the post-trial delay in this case, while unacceptable, was harmless beyond a reasonable doubt. *United States v. Allende*, 66 M.J. 142, 145 (C.A.A.F. 2008). "To find otherwise would essentially adopt a presumption of prejudice in cases where [we find] a due process violation as a result of unreasonable post-trial delay" a standard the Court of Appeals has repeatedly declined to adopt. *United States v. Bush*, 68 M.J. 96, 104 (C.A.A.F. 2009).

We next consider whether this is an appropriate case to exercise our authority to grant relief under Article 66(c), UCMJ, in light of *Toohey v. United States*, 60 M.J. 100, 101-02 (C.A.A.F. 2004), and *United States v. Tardif*, 57 M.J. 219, 224 (C.A.A.F. 2002), and the factors articulated in *United States v. Brown*, 62 M.J. 602 (N.M.Ct.Crim.App. 2005)(en banc). Having done so, we conclude that any meaningful relief available would be an undeserved windfall for the appellant and disproportionate to any possible harm the appellant suffered as a result of the post-trial delay. *United States v. Rodriguez-Rivera*, 63 M.J. 372, 386 (C.A.A.F. 2006). Therefore, we find that the delay in this case does not affect the findings or sentence that should be approved. Art. 66(c), UCMJ.

We are satisfied that the findings and sentence are correct in law and fact and that no error materially prejudicial to the appellant's substantial rights exists. Arts. 59(a) and 66(c), UCMJ. Accordingly, the findings and approved sentence are affirmed.

For the Court,

R.H. TROIDL
Clerk of Court