

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

**Before
B.L. PAYTON-O'BRIEN, R.G. KELLY, J. MCFARLANE
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**JUSTIN A. BEASLEY
CORPORAL (E-4), U.S. MARINE CORPS**

**NMCCA 201200293
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 17 February 2012.

Military Judge: LtCol Kevin Harris, USMC.

Convening Authority: Commanding Officer, 1st Battalion, 7th
Marines, 1st Marine Division, MCAGCC, Twentynine Palms, CA.

Staff Judge Advocate's Recommendation: Maj V.G. Laratta,
USMC.

For Appellant: CDR Howard Liberman, JAGC, USN.

For Appellee: LT P.S. Reutlinger, JAGC, USN; LT Ann Dingle,
JAGC, USN.

31 October 2012

OPINION OF THE COURT

**THIS OPINION DOES NOT SERVE AS BINDING PRECEDENT, BUT MAY BE CITED AS
PERSUASIVE AUTHORITY UNDER NMCCA RULE OF PRACTICE AND PROCEDURE 18.2.**

PER CURIAM:

A military judge sitting as a special court-martial convicted the appellant, pursuant to his pleas, of two specifications of conspiring to wrongfully sell military property, one specification of making a false official statement, and two specifications of the wrongful sale of military property, in violation of Articles 81, 107, and 108,

Uniform Code of Military Justice, 10 U.S.C. §§ 881, 907, and 908. The military judge sentenced the appellant to 75 days confinement, reduction to pay grade E-1, a fine of \$2,000.00, additional confinement of 60 days if the fine was not paid, and a bad-conduct discharge. The convening authority (CA) approved the sentence as adjudged.¹

Assignment of Error

The sole assignment of error raised by the appellant is that "[t]he CA's action contains an inaccuracy which should be corrected as Appellant is entitled to an accurate record."² The appellant alleges, and the Government concedes, that the CA's action indicates that it was taken within 120 days after the completion of the trial, when in fact the action was taken 124 days after the trial was completed. The appellant is entitled to have his official records correctly reflect the results of his proceeding. *United States v. Crumply*, 49 M.J. 538, 539 (N.M.Ct.Crim.App. 1998). Accordingly, we will order remedial action in our decretal paragraph.

Post-Trial Delay

Although not raised by the appellant, his assignment of error also requires this court to determine whether the appellant's "due process right to timely review" has been violated. *United States v. Moreno*, 63 M.J. 129, 135 (C.A.A.F. 2006). Under the *Moreno* standards, a CA's failure to take action within 120 days of the completion of trial is presumptively unreasonable and triggers the four-factor analysis set forth in *Barker v. Wingo*, 407 U.S. 514, 530 (1972). *Id.* at 142. The *Barker* factors that this court must weigh and balance are: 1) the length of the delay; 2) the reasons for the delay; 3) the appellant's assertion of the right to timely review and appeal; and 4) prejudice. *Id.* at 135.

In this case, the CA took action 124 days after the completion of trial. The brief additional delay of four days is easily explained by the fact that a substitute convening authority was required to act on the case. As was noted in the CA's action, "[i]t was impractical for the original convening authority to act in this case due to deployment in support of

¹ To the extent that the CA's action purports to direct that the punitive discharge will be executed after final judgment it is a legal nullity. See *United States v. Tarniewicz*, 70 M.J. 543, 544 (N.M.Ct.Crim.App. 2011).

² Appellant's Summary Assignment of Error of 22 Aug 2012.

Operation Enduring Freedom [and therefore the case] was forwarded to [the first] superior General Court-Martial Convening Authority within the original convening authority's chain of command." As for the third and fourth factors, the appellant has not asserted his right to a speedy review, and his pleading specifically stated that he is "not alleging prejudice" from the brief delay. Accordingly, we find that the appellant's Due Process right to a timely review was not violated in this case.

However, even assuming *arguendo* that the appellant's Due Process right to a speedy review had been violated, he would still not be entitled to relief. Errors of constitutional magnitude are tested for harmlessness, which means that no relief is provided when the court finds beyond a reasonable doubt that the error was harmless. *United States v. Gosser*, 64 M.J. 93, 99 (C.A.A.F. 2006). In cases such as this, where there was clearly no prejudice to the appellant arising from the delay, any error would have been harmless beyond a reasonable doubt.

Conclusion

We affirm the findings and the sentence as approved by the CA. The supplemental court-martial order shall correctly reflect that the CA's Action was taken 124 days after the date of trial.

For the Court

R.H. TROIDL
Clerk of Court