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

**BEFORE**

**J.D. HARTY**

**R.G. KELLY**

**W.M. FREDERICK**

**UNITED STATES**

**v.**

**Matthew J. SPEIGHTS**  
**Staff Sergeant (E-6), U. S. Marine Corps**

NMCCA 200600386

Decided 28 February 2007

Sentence adjudged 05 October 2004. Military Judge: M.B. Richardson. Review pursuant to Article 66(c), UCMJ, of General Court-Martial convened by Commanding General, 2d Marine Division, Camp Lejeune, NC.

LCDR DEREK HAMPTON, JAGC, USNR, Appellate Defense Counsel  
LT AIMEE SOUDERS, JAGC, USN, Appellate Defense Counsel  
LCDR PAUL BUNGE, JAGC, USN, Appellate Government Counsel

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.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, consistent with his pleas, of violation of a general order, dereliction of duty, sale of military property, and theft of military property, in violation of Articles 92, 108, and 121, Uniform Code of Military Justice, 10 U.S.C. §§ 892, 908, and 921. The appellant was sentenced to a bad-conduct discharge, confinement for 18 months, and reduction to pay grade E-1. In accordance with a pretrial agreement, the convening authority approved the sentence as adjudged and suspended confinement in excess of 12 months for a period of 12 months from the date of his action.

The appellant raises three assignments of error: (1) he was denied his Sixth Amendment right to effective assistance of counsel; (2) his sentence was inappropriately severe, and (3) post-trial processing delays materially prejudiced his substantial right to a speedy post-trial review, affecting the sentence that should be approved. We have reviewed the record, the appellant's assignments of error, and the Government's

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response.<sup>1</sup> We find merit in the appellant's third assignment of error and will take corrective action in our decretal paragraph. Otherwise, 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. Arts. 59(a) and 66(c).

### Ineffective Assistance of Counsel

In his first assignment of error, the appellant alleges he was deprived of effective assistance of counsel.<sup>2</sup> The appellant claims that trial defense counsel failed to expose serious flaws in the Defense Reutilization and Marketing Office, failed to interview key witnesses who may have exonerated the appellant, and offered unethical advice to the appellant regarding how to respond to questions posed during the providence inquiry. The appellant asks this court to set aside the findings and sentence or order a hearing in accordance with *United States v. DuBay*, 37 C.M.R. 411 (C.M.A. 1967). He also asks this court to "order the Marine Corps to issue a written letter of apology to every person who was a prisoner with him as [sic] the Camp Lejeune Brig." Appellant's Brief of 31 Aug 2006 at 8.

In reviewing allegations of ineffective assistance of counsel, we conduct a *de novo* review and apply the standards established in *Strickland v. Washington*, 466 U.S. 668 (1984). To prevail on such a claim, the appellant has the burden of demonstrating: (1) his counsel was deficient; and (2) he was prejudiced by the deficient performance. *Id.* at 687. This requires a showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. *Id.* Such a showing requires the appellant to "surmount a very high hurdle." *United States v. Moulton*, 47 M.J. 227, 229 (C.A.A.F. 1997).

None of the appellant's allegations of ineffective assistance of counsel are supported by any evidence.<sup>3</sup> The

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<sup>1</sup> The Government, in one portion of its answer, incorrectly lists the appellant's crimes as "drug use, housebreaking and wrongful appropriation." The appellant was not charged with any of these offenses. Government's Brief of 2 Oct 2006 at 9.

<sup>2</sup> Raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

<sup>3</sup> On 31 August 2006, the appellant filed with this court a Motion to Attach a notarized but unsworn letter from the appellant accompanied by a "report" regarding military corruption and the need to overhaul the military justice system. Appellant's Motion to Attach of 31 Aug 2006. The Motion to Attach violated this court's rules as it failed to summarize proposed items to be attached, failed to contain a statement as to the relevance to the case, and contained statements that were neither in affidavit nor declaration form; thus failing to satisfy even the basic dictates of relevance and reliability. The appellant's motion was denied, without prejudice, for further submission in accordance with court rules. A second Motion to Attach the same documents

appellant, therefore, fails to meet, even minimally, the required showing of deficiency and prejudice articulated by *Strickland v. Washington*. As such, this assignment of error has no merit.

### Sentence Appropriateness

In his second assignment of error, the appellant asserts that a sentence consisting of 18 months confinement, reduction to pay grade E-1, and a bad-conduct discharge is inappropriately severe. 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)). Courts of Criminal Appeals are tasked with determining sentence appropriateness, as opposed to bestowing clemency, which is the prerogative of the convening authority. *Healy*, 26 M.J. at 395. A sentence should not be disturbed on appeal, "unless the harshness of the sentence is so disproportionate as to cry out for sentence equalization." *United States v. Usry*, 9 M.J. 701, 704 (N.C.M.R. 1980).

In the present case, the appellant pled guilty to stealing military property including 66 rescue etriers, Gortex modular gloves, Camelbak water systems, a Safariland Tactical .45 holster, two USMC Multipurpose Poncho Systems, a tactical infrared gun laser, rail-mounted weapons lights, mountain climbing gear and ten outer tactical vests. These items were taken for the appellant's personal gain, as he sold the ten outer tactical vests, the infrared gun laser, the rail-mounted weapons lights, and mountain gear on E-Bay for \$10,285.00. The appellant also kept a pistol and hunting rifle in his base housing in violation of a lawful general order and was derelict in his duties by leaving a live fire range with 18 individual 5.56 rounds which he failed to turn in. After reviewing the entire record, and taking into consideration the appellant's excellent military record, we find that the adjudged sentence is appropriate for this offender and his offenses. *Healey*, 26 M.J. at 395; *Snelling*, 14 M.J. at 268.

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was filed on 13 September 2006. The deficiencies noted in this Court's first order denying the request to attach documents were not corrected and the appellant's motion was again denied. The appellant filed a Motion to Reconsider on 3 November 2006. The motion was denied on 15 November 2006. As such, there is no evidence before this court on this issue, only argument contained in the appellate defense counsel's Brief and Assignment of Errors filed out of time.

## Post-Trial Delay

In his third assignment of error, the appellant alleges that he was denied his due process right to a speedy post-trial review of his case. The appellant's trial concluded on 5 October 2004. The Convening Authority acted on 30 March 2005, and the case was finally docketed at this Court on 17 April 2006. The appellant argues that the 559 days that elapsed between trial and this case being docketed violated his due process rights, thus entitling him to relief. The appellant also argues that, given the excessive delay in post-trial processing in this case, he is entitled to relief pursuant to Article 66(c), UCMJ.

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).

We note with concern that, of the 559-day delay, 383 days elapsed between the convening authority's action and docketing of this case on appeal. Our superior court has called delays in forwarding a case for docketing "the least defensible of all" post-trial delays. *United States v. Dunbar*, 31 M.J. 70, 73 (C.M.A. 1990). We find this 559-day delay in docketing this 116-page record of trial to be facially unreasonable, triggering a due process review.

Regarding the second factor, the Government offers no explanation for the post-trial delay and the record reflects no attempt by the Government to discover why this relatively simple case took 559 days to docket with this court. As for the third factor, the appellant did not assert the right to a timely appeal before filing his brief, out of time, before this court. This however, does not weigh heavily against the appellant. *United States v. Moreno*, 63 M.J. 129, 138 (C.A.A.F. 2006).

With respect to the fourth factor, we evaluate prejudice to the appellant in light of three interests which the right to timely appeal was designed to protect. *Id.* First, we find the appellant was not subjected to oppressive incarceration, as we have determined there to be no merit to any of the appellant's allegations of error. Second, there is no evidence suggesting the appellant suffered any particular anxiety or concern awaiting the outcome of his appeal. Finally, there is no indication that the appellant's grounds for appeal were impaired by the

Government's extensive delay in post-trial processing of the appellant's court-martial. We find, therefore, that the appellant was not prejudiced by post-trial delay. While the delay in this case is facially unreasonable, we do not find it "so egregious that tolerating it would adversely affect the public's perception of the fairness and integrity of the military justice system." *United States v. Toohey*, 63 M.J. 353, 362 (C.A.A.F. 2006). This finding, coupled with the absence of any showing of prejudice, leads us to the conclusion that no due process violation resulted from the post-trial delay.

We next consider whether the delay affects the findings and sentence that should be approved. *United States v. Tardif*, 57 M.J. 219 (C.A.A.F. 2002); *United States v. Brown*, 62 M.J. 602 (N.M.Ct.Crim.App. 2005) (en banc). In this case, the majority of the delay occurred between completion of the convening authority's action and docketing with this court. While the appellant asserts no specific harm attributable to the delay, the Government failed to provide any explanation as to why it took 383 days after the convening authority's action to get this record of trial from Camp Lejeune, North Carolina, to this Court, a distance of approximately 350 miles. As noted, the appellant was convicted, pursuant to his pleas, of stealing and selling military property of the United States, violating a general order, and dereliction of duty. Given the relatively simple nature of this case, we cannot ignore the Government's negligence in its post-trial processing and its subsequent failure to make any effort to account for its delay; such factors weigh heavily in favor of relief. We find that the delay affects the sentence that should be approved in this case and we take corrective action in our decretal paragraph.

#### Conclusion

Accordingly, we affirm the findings of guilty and only so much of the sentence as provides for confinement for 17 months, reduction in rate to E-1, and a bad-conduct discharge.

For the Court



R.H. TROIDL

Clerk of Court

