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

Before
E.E. GEISER, L.T. BOOKER, J.K. CARBERRY
Appellate Military Judges

UNITED STATES OF AMERICA

v.

AMBER N. ADKISSON
BOATSWAIN'S MATE THIRD CLASS (E-4), U.S. NAVY

NMCCA 200700691
SPECIAL COURT-MARTIAL

Sentence Adjudged: 19 December 2002.
Military Judge: CAPT Peter Fagan, JAGC, USN.
Convening Authority: Commanding Officer, USS JOHN C. STENNIS (CVN 74).
Staff Judge Advocate's Recommendation: LCDR R.J. Hunt, JAGC, USN (8 Apr 2003); LCDR M.B. Kurek, JAGC, USN (30 Dec 2008).
For Appellant: LT Gregory W. Manz, JAGC, USN; LT Scott Stoebner, JAGC, USN.
For Appellee: Capt Michael Aniton, USMC.

30 September 2009

OPINION OF THE COURT

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.

PER CURIAM:

A military judge sitting as a special court-martial convicted the appellant, pursuant to her pleas, of two specifications of attempted larceny, two specifications of unauthorized absence, one specification of wrongful use of marijuana, two specifications of larceny, and one specification of forgery in violation of Articles 80, 86, 112a, 121, and 123,

of the Uniform Code of Military Justice, 10 U.S.C. §§ 880, 886, 912a, 921, and 923.

Subsequent to submission of the appellant's brief, and pursuant to the Government's motion to remand, this court set aside the first two convening authority's (CA) actions and returned the record of trial to the Judge Advocate General for submission to a proper CA for post-trial processing in compliance with RULES FOR COURTS-MARTIAL 1105-1107, MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed).

On 28 March 2009, a new CA's action was executed. In that action, the CA approved confinement for 60 days, a fine of $500.00, and reduction to pay grade E-1. The CA disapproved the bad-conduct discharge.

The appellant raises the following five assignments of error (AOE):

I

> The second CA's action failed to consider clemency matters; additionally, it relies upon an SJAR that is almost three years old. Accordingly, this Court should order a new CA's action and a new SJAR and should provide Appellant with an opportunity to present updated matters in clemency.

II

> The record of trial omits the clemency matters submitted by the accused. This omission amounts to a substantial omission requiring remand for a new CA's action.

III

> The record of trial omitted proof of service of the SJAR upon defense counsel. Due to the additional omission of the clemency matters originally submitted by BM3 Adkisson, we cannot ascertain whether BM3 Adkisson was represented by defense counsel for purposes of accepting service of the SJAR and responding thereto.

IV

> The original record of trial in this case has been lost and a copy has been compiled in order to complete

appellate review. However, the new record of trial has not been independently authenticated per R.C.M. 1104(c). Accordingly, this court should send the record back for a proper authentication.

V

The Government has failed to protect Appellant's right to timely appellate review where 1,805 days have elapsed between the date the sentence was adjudged and the date appellant's record was docketed at this court.

Documents submitted to this court show that a new staff judge advocate's recommendation was prepared on 30 December 2008, and that trial defense counsel acknowledged receipt of that recommendation on 11 February 2009. The submitted documents also show that trial defense counsel filed additional clemency matters on 4 February 2009, which the CA specifically referenced in his 28 March 2009 action. The CA's reference to the clemency matters and his disapproval of the bad-conduct discharge convince this court that the appellant was adequately represented by counsel and that the CA considered the appellant's clemency matters. The post-trial processing that occurred subsequent to this court's 3 March and 24 November 2008 Orders renders moot AOEs I-III.

AOE IV

In her fourth AOE, the appellant argues that because the original record of trial was apparently lost and a duplicate copy was submitted for appellate review, a new record of trial should be prepared and authenticated, as set out in RULE FOR COURTS-MARTIAL 104(c), MANUAL FOR COURT-MARTIAL, UNITED STATES (2008 ed.). We decline to grant such relief.

R.C.M. 1103(g)(1)(A) directs production of an original record of trial. In accordance with R.C.M. 1103(g)(1)(B), the convening authority is authorized to direct production of additional copies, as needed. While the original record of trial in this case has apparently been lost, a duplicate copy of the authenticated verbatim record was retrieved and submitted for appellate review.

Having carefully examined the duplicate record, we find that it is internally consistent and contains all numbered pages and exhibits. In addition, there are no apparent irregularities

in the sequence of the various post-trial action dates. Of particular importance, the duplicate also contains a copy of the authentication page signed by the military judge as well as the detailed defense counsel's receipt for the appellant's copy of the record. Considering the undisputed completeness of this duplicate, we apply a presumption of regularity to its creation, authentication, and distribution. *United States v. Godbee*, 67 M.J. 532, 533 (N.M.Ct.Crim.App. 2008)(citing *United States v. Weaver*, 1 M.J. 111, 115 (C.M.A. 1975)), *rev. denied*, 67 M.J. 406 (C.A.A.F. 2009). In view of this presumption of regularity inherent in court proceedings, the initial burden of impeaching an official record is on the party seeking to attack it.

The appellant has provided nothing to undercut our presumption of regularity in the completeness, accuracy, or authenticity of the duplicate copy of the record of trial submitted for appellate review. Furthermore, the appellant has identified no prejudice attributable to our use of the duplicate record. *United States v. Wheelus*, 49 M.J. 283, 288 (C.A.A.F. 1998). When there is no claim that the record of trial submitted for appellate review is inaccurate, this court has generally found harmless error. *United* States v. *Merz*, 50 M.J. 850, 853-54 (N.M.Ct.Crim.App. 1999); *see United States v. Ayers*, 54 M.J. 85, 92 (C.A.A.F. 2000). We, therefore, decline to grant relief in this instance.

AOE V

In her fifth AOE, the appellant alleges that she was denied speedy post-trial review because it took 1805 days from the day she was sentenced until her appeal was docketed with this court. The appellant raises post-trial delay for the first time on appeal and has not articulated any prejudice resulting from undue delay in post-trial review. Moreover, the CA’s disapproval of the bad-conduct discharge provides the relief the appellant requested in her brief and clemency petition.

Assuming, without deciding, that the appellant was denied her due process right to speedy post-trial review, we conclude that any error in that regard was harmless beyond a reasonable doubt. *United States v. Allison*, 63 M.J. 365, 370 (C.A.A.F. 2006); *see also United States v. Haney*, 64 M.J. 101, 108 (C.A.A.F. 2006). Even if such error was not harmless, any relief we could fashion would be disproportionate to the possible harm generated from the delay in light of the appellant’s offenses and the relief already provided to her by

the CA. *United States v. Rodriguez-Rivera*, 63 M.J. 372, 386 (C.A.A.F. 2006).

We are aware of our authority to grant relief under Article 66, UCMJ, and in this case we choose not to exercise it. *United States v. Simon*, 64 M.J. 205 (C.A.A.F. 2006); *Toohey v. United States*, 60 M.J. 100, 102 (C.A.A.F. 2004); *United States v. Tardif*, 57 M.J. 219, 224 (C.A.A.F. 2002); *United States v. Brown*, 62 M.J. 602 (N.M.Ct.Crim.App. 2005)(en banc).

Conclusion

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

For the Court

R.H. TROIDL
Clerk of Court