

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

**Before  
R.E. VINCENT, E.C. PRICE, J.E. STOLASZ  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**KEITH S. SOJDA  
AVIATION ELECTRICIAN'S MATE AIRMAN (E-3), U.S. NAVY**

**NMCCA 200401746  
SPECIAL COURT-MARTIAL**

**Sentence Adjudged:** 29 November 2000.

**Military Judge:** CDR Robert Redcliff, JAGC, USN.

**Convening Authority:** Commanding Officer, Helicopter  
Antisubmarine Squadron Light THIRTY-SEVEN, Marine Corps  
Base Hawaii, Kaneohe Bay, HI.

**Staff Judge Advocate's Recommendation:** LT Justin Pilling,  
JAGC, USN.

**For Appellant:** Maj Richard Belliss, USMC.

**For Appellee:** Maj Tai Le, USMC.

**12 February 2009**

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**OPINION OF THE COURT**  
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**AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.**

PRICE, Judge:

This case is before us for the second time. A military judge, sitting as a special court-martial, convicted the appellant, pursuant to his pleas, of two specifications of failure to go to his appointed place of duty, absence without authority, disobedience of a lawful order, wrongful use of marijuana, and wrongful appropriation of Government property, in violation of Articles 86, 92, 112a and 121, Uniform Code of Military Justice, 10 U.S.C. §§ 886, 892, 912a, and 921. Contrary to his plea, the appellant was convicted of a second

specification of unauthorized absence in violation of Article 86, UCMJ. The appellant was sentenced to confinement for 95 days, reduction to pay grade E-1, and a bad-conduct discharge. The convening authority (CA) approved the sentence as adjudged and, pursuant to a pretrial agreement, suspended all confinement in excess of 60 days for a period of 12 months from the date of trial.

On 17 January 2007, this Court affirmed the findings with exceptions and substitutions to Specification 10 of Charge I, but due to the absence of the legal officer's recommendation from the record of trial, set aside the CA's action and returned the record for new post-trial processing. *United States v. Sojda*, No. 200401746, 2007 CCA LEXIS 20, unpublished op. (N.M.Ct.Crim.App. 17 Jan 2007). Subsequently, the CA approved the reduction in rate and confinement portions of the sentence, but disapproved the bad-conduct discharge. Pursuant to the pretrial agreement, the CA remitted confinement in excess of 60 days.

The appellant submitted a brief asserting two assignments of error based upon post-trial delay: (1) violation of his constitutional due process rights by untimely post-trial review and processing, and (2) that this court should grant sentence relief due to excessive post-trial and appellate delay.

We have examined the record of trial, the appellant's brief and supplemental brief and the Government's answers. We will take and order corrective action in our decretal paragraph and, following that action, we conclude that the findings and the sentence are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant remains. Arts. 59(a) and 66(c), UCMJ.

#### **Post-Trial Delay**

The appellant was sentenced on 29 November 2000, the initial CA's action was dated 24 July 2001, this case was initially docketed with this court on 05 April 2005, and our opinion remanding the case was issued on 17 January 2007. Following completion of the staff judge advocate's recommendation (SJAR) and receipt of the appellant's clemency submission, the CA took action on 05 June 2008. The case was re-docketed with this court on 19 June 2008 and on 26 June 2008, 2,770 days after sentencing, the appellant filed his supplemental brief.

This case was tried and initially docketed with this court prior to the Court of Appeals for the Armed Forces (CAAF) decision in *United States v. Moreno*, 63 M.J. 129 (C.A.A.F. 2006). Following remand by this court, the case was re-docketed after the date of the *Moreno* decision, so we will assume without deciding that the presumptions of unreasonable delay set forth in *Moreno* apply.

There is little question that the delay in this case is facially unreasonable, and we assume, without deciding, that the appellant was denied his due process right to speedy post-trial review and appeal, and 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). Aside from the appellant's unsubstantiated allegations that "the delay in achieving a resolution in [t]his case has likely impacted [his] employment status and financial health," he alleges no specific prejudice as a result of post-trial delay. Appellant's Supplemental Brief of 26 Jun 2008 at 7.

In that the appellant has failed to provide any substantiated evidence of prejudice, we conclude that the assumed error was harmless beyond a reasonable doubt. *United States v. Allende*, 66 M.J. 142, 145 (C.A.A.F. 2008). 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 CA's disapproval of the bad-conduct discharge, ostensibly due to the extensive post-trial delay.<sup>1</sup> *United States v. Rodriguez-Rivera*, 63 M.J. 372, 386 (C.A.A.F. 2006); Court-Martial Order and Convening Authority's Action of 05 Jun 2008 at 5-6.

We are aware of our authority to grant additional relief under Article 66(c), UCMJ, and we choose not to exercise it in this case. *Moreno*, 63 M.J. 143-44; see also *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). We find that the delay in this case did not impact the findings or sentence that should be approved. Art. 66(c), UCMJ.

#### **Promulgating Order and Convening Authority's Action Errors**

Although not raised by the appellant, we note that the court-martial promulgating order and the SJAR contain a number of errors. Specifications 8 and 9 of Charge I both misstate the situs of the appellant's duty as: "Restricted men's muster" vice "Duty driver watch." Charge Sheet; Court-Martial Order of 05 Jun 2008 at 3; SJAR of 16 May 2008 at 3; Record at 78-88, 278. Specification 10 of Charge I reflects the commencement date of the unauthorized absence as "8 July 2000" vice "3 July 2000." Charge Sheet; Court-Martial Order of 05 Jun 2008 at 3; SJAR of 16

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<sup>1</sup> The convening authority's action notes that he disapproved the bad-conduct discharge as clemency "[a]fter careful consideration" of the appellant's clemency submission and the SJAR. Both documents recommended disapproval of the bad-conduct discharge based primarily upon the extensive post-trial delay. Court-Martial Order and Convening Authority's Action of 05 Jun 2008 at 5-6; Appellant's Clemency Request of 26 May 2008 at ¶¶ 1,2,4; Staff Judge Advocate's Recommendation (SJAR) of 16 May 2008 at 9, ¶5.

May 2008 at 3; Record at 89-97, 278. Specification 11 of Charge I reflects "with exceptions and substitutions," but does not reflect exception of the period "22 to 25 September." Court-Martial Order of 05 Jun 2008 at 3; SJAR of 16 May 2008 at 4; Record at 278.

The appellant has not asserted, and we have not found any prejudice to the appellant from these scrivener's errors. The appellant is nonetheless entitled to a record that correctly reflects the results of his court-martial. *United States v. Crumpley*, 49 M.J. 538, 539 (N.M.Ct.Crim.App. 1998). We will order appropriate action in the decretal paragraph.

In addition, the Convening Authority's Action does not reflect this court's prior holding with respect to the commencement date of the unauthorized absence in Specification 10 of Charge I. Specifically this Court held that the initiation date of this unauthorized absence was "5 July 2000." *Sojda*, 2007 CCA LEXIS 20, at 4. We will take appropriate action in the decretal paragraph.

### Conclusion

We direct that the supplemental court-martial promulgating order properly reflect the offenses upon which the appellant was arraigned and the findings of the court-martial. Specifically, in Specifications 8 and 9 of Charge I, except "Restricted men's muster" and substitute "Duty driver watch," and in Specification 11 of Charge I insert "Guilty, except for the period 22 to 25 September. Of the excepted period, Not Guilty. Of the two shorter periods of unauthorized absence encompassed within Specification 11 as excepted, Guilty."

As to Specification 10 of Charge I, the word and figures "0730, 3 July 2000," are excepted and the word and figures "5 July 2000," are substituted therefore by this Court. The excepted language is dismissed. The finding of guilty of Specification 10 of Charge I, as excepted and substituted, and the remaining findings of guilty, are affirmed.

As a result of our action on the findings, we reassess the sentence in accordance with the principles of *United States v. Moffeit*, 63 M.J. 40, 42 (C.A.A.F. 2006); *United States v. Cook*, 48 M.J. 434, 438 (C.A.A.F. 1998); *United States v. Peoples*, 29 M.J. 426, 428 (C.M.A. 1990); and *United States v. Sales*, 22 M.J. 305, 307-08 (C.M.A. 1986). We are satisfied that, absent this

error, the adjudged sentence would have been at least the same as that adjudged by the military judge and approved by the convening authority. The approved sentence is affirmed.

Senior Judge VINCENT and Judge STOLASZ concur.

For the Court

R.H. TROIDL  
Clerk of Court