

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

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UNITED STATES

v.

Technical Sergeant RUBEN N. ABLANG  
United States Air Force

ACM 37131 (f rev)

06 January 2009

Sentence adjudged 01 October 2007 by GCM convened at RAF Mildenhall, United Kingdom. Military Judge: Gordon R. Hammock and Jennifer L. Cline (sitting alone).

Approved sentence: Confinement for 18 months, fine of \$1,500.00, and reduction to E-2.

Appellate Counsel for the Appellant: Lieutenant Colonel Mark R. Strickland, Major Shannon A. Bennett, Captain Tiaundra D. Sorrell, and Dwight H. Sullivan, Esquire.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Jeremy S. Weber, Major Donna S. Rueppell, and Captain Naomi N. Porterfield.

Before

HEIMANN, THOMPSON, and PLACKE  
Appellate Military Judges

UPON FURTHER REVIEW

This opinion is subject to editorial correction before final release.

PER CURIAM:

This case is before our Court for further review because the original Action was returned to the convening authority for correction pursuant to Rule for Courts-Martial 1107(g). *United States v. Ablang*, ACM 37131 (A.F. Ct. Crim. App. 25 Jun 2008) (unpub. op.). After finding the approved findings and sentence correct in law and fact, and finding no error prejudicial to the substantial rights of the appellant, we returned the

case to The Judge Advocate General for remand to the convening authority for a corrected Action because it referenced review under Article 69, UCMJ, 10 U.S.C. § 869 vice Article 66, UCMJ, 10 USC § 866. On 30 July 2008, a successor convening authority withdrew the prior Action and substituted a corrected Action.<sup>1</sup> On 17 September 2008 the record was returned to this Court for further review.

Initially, appellant submitted this case to the Court on its merits. Upon return of the case for further review, they contend that the 49-day delay in returning the case to this Court, upon correction of the Action, warrants appropriate relief in light of *United States v. Moreno*, 63 M.J. 129 (C.A.A.F. 2006) and *United States v. Tardif*, 57 M.J. 219 (C.A.A.F. 2002). Appellant argues that because the delay is facially unreasonable under the *Moreno* standards, we should grant relief essentially as a message that delays of this nature are unacceptable.<sup>2</sup> Appellant specifically refers the Court to *Tardif* for the proposition that we have the authority to grant relief even if we find no prejudice. Like appellant, we too find *Moreno* violations unacceptable. But as the appellant essentially concedes, it is obvious that the minor delay in returning the record of trial to this Court is harmless beyond a reasonable doubt. See *United States v. Allison*, 63 M.J. 365, 370 (C.A.A.F. 2006).

### *Conclusion*

Finally, we agree with appellant that under *Tardif*, this Court may only approve those findings that “should be approved.” *Tardif*, 57 M.J. at 224. Having considered the totality of the circumstances and the entire record, we conclude that any denial of the appellant’s right to speedy post-trial review and appeal was harmless beyond a reasonable doubt and that no relief is warranted. We further conclude, having considered our responsibilities and authority outlined in *Tardif*, the findings and sentence are correct in law and fact and should be approved as adjudged. We further find no error prejudicial to the substantial rights of the appellant occurred. Article 66(c), UCMJ; *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000).

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<sup>1</sup> We are mindful of our superior court’s recent decision holding that the record of trial must contain evidence that “the successor convening authority communicated with the original convening authority and that the corrected action reflects the original convening authority’s intent.” *United States v. Mendoza*, 67 M.J. 53, 54 (C.A.A.F. 2008) (citing *United States v. Lower*, 10 M.J. 263, 265 (C.M.A. 1981)). Upon consideration of the technical nature of this correction, we are satisfied that such documentation is not required.

<sup>2</sup> Under *United States v. Moreno*, 63 M.J. 129 (C.A.A.F. 2006), the record should have been redocketed with this Court within 30 days of the new Action.

Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL



STEVEN LUCAS, YA-02, DAF  
Clerk of the Court