

**UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS**

No. ACM 39089

UNITED STATES

Appellee

v.

Hunter J. DENNY

Airman Basic (E-1), U.S. Air Force, *Appellant*

Appeal from the United States Air Force Trial Judiciary

Decided 21 September 2017

Military Judge: Marvin W. Tubbs II.

Approved sentence: Dishonorable discharge and confinement for 1 year. Sentence adjudged 10 February 2016 by GCM convened at Sheppard Air Force Base, Texas.

For Appellant: Captain Patricia Encarnación Miranda, USAF.

For Appellee: Major Mary Ellen Payne, USAF; Gerald R. Bruce, Esquire. Before DREW, MAYBERRY, and BENNETT, *Appellate Military Judges*.

This is an unpublished opinion and, as such, does not serve as precedent under AFCCA Rule of Practice and Procedure 18.4.

PER CURIAM:

The approved findings and sentence are correct in law and fact, and no error materially prejudicial to Appellant's substantial rights occurred. Articles

59(a) and 66(c), Uniform Code of Military Justice, 10 U.S.C. §§ 859(a), 866(c). Accordingly, the approved findings and sentence are **AFFIRMED**.*



FOR THE COURT

A handwritten signature in black ink, appearing to read "Kurt J. Brubaker".

KURT J. BRUBAKER
Clerk of the Court

* Though not raised by Appellant, we note that 2016 was a leap year, February 2016 had 29 days, and the convening authority failed to take action within 120 days. Rather, action was taken in 121 days. Therefore, we apply a rebuttable presumption of unreasonable post-trial delay which triggers an analysis of the four factors from *Barker v. Wingo*, 407 U.S. 514, 530 (1972). See *United States v. Moreno*, 63 M.J. 129, 142–43 (C.A.A.F. 2006). Based on our de novo review and after applying the four *Barker v. Wingo* factors, we find no prejudice, and any post-trial delay in this case harmless beyond a reasonable doubt. Moreover, while Article 66(c) empowers appellate courts to grant sentence relief for excessive post-trial delay without the showing of actual prejudice, we conclude that sentence relief under Article 66(c) is unwarranted. See *Tardif*, 57 M.J. 219, 224 (C.A.A.F. 2002); see also *United States v. Harvey*, 64 M.J. 13, 24 (C.A.A.F. 2006).