

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class EDWARD W. GUSSMAN
United States Air Force**

ACM 38048

14 March 2013

Sentence adjudged 29 August 2011 by GCM convened at Tinker Air Force Base, Oklahoma. Military Judge: Donald R. Eller, Jr. (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 10 years, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for the Appellant: Captain Travis K. Ausland.

Appellate Counsel for the United States: Colonel Don M. Christensen; Major Scott C. Jansen; and Gerald R. Bruce, Esquire.

Before

**GREGORY, HARNEY, and SOYBEL
Appellate Military Judges**

This opinion is subject to editorial correction before final release.

PER CURIAM:

A general court-martial composed of military judge alone convicted the appellant in accordance with his pleas of two specifications of aggravated sexual assault of a child under the age of 16 years, in violation of Article 120, UCMJ, 10 U.S.C. § 920; one specification of sodomy with a child, in violation of Article 125, UCMJ, 10 U.S.C. § 925; one specification of communicating indecent language to a child, in violation of Article 134, UCMJ, 10 U.S.C. § 934; two specifications of possessing child pornography in violation of Article 134, UCMJ; and two specifications of attempted aggravated sexual assault of a child under the age of 16 years, in violation of Article 80, UCMJ, 10 U.S.C. § 880. The court sentenced him to a dishonorable discharge, confinement for 10 years, forfeiture of all pay and allowances, and reduction to the grade of E-1. The convening

authority approved the sentence as adjudged. The appellant argues that a 36-day delay in forwarding the record of trial after convening authority action requires sentence relief.

The convening authority acted on 26 October 2011, and the record was docketed with the Court on 30 November 2011. An overall delay of more than 30 days between the time the convening authority took action on the case and when it was docketed at the Air Force Court of Criminal Appeals for completion of review by the Court is facially unreasonable. *United States v. Moreno*, 63 M.J. 129, 142 (C.A.A.F. 2006). The processing time in this case exceeded the standard by a few days. Because the delay is facially unreasonable, we examine the four factors set forth in *Barker v. Wingo*, 407 U.S. 514, 530 (1972): “(1) the length of the delay; (2) the reasons for the delay; (3) the appellant’s assertion of the right to timely review and appeal; and (4) prejudice.” *Moreno*, 63 M.J. at 135-36. When we assume error but are able to directly conclude that any error was harmless beyond a reasonable doubt, we do not need to engage in a separate analysis of each factor. *United States v. Allison*, 63 M.J. 365, 370 (C.A.A.F. 2006). This approach is appropriate in the appellant’s case. 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. We do not find sufficient cause in this case to grant relief, absent prejudice. *See United States v. Tardif*, 57 M.J. 219, 225 (C.A.A.F. 2002) (Service courts have the authority under Article 66(c), UMCJ, 10 U.S.C. § 866(c), to “tailor an appropriate remedy [for post-trial delay], if any is warranted, to the circumstances of the case.”).

Conclusion

The approved findings and sentence are correct in law and fact, and 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). Accordingly, the approved findings and sentence are

AFFIRMED.



FOR THE COURT

A handwritten signature in cursive script, appearing to read "Laquitta J. Smith".

LAQUITTA J. SMITH
Appellate Paralegal Specialist