UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant JEROME A. JONES, JR.
United States Air Force

ACM 37528 (rem)

16 October 2013

Sentence adjudged 23 January 2009 by GCM convened at Little Rock Air Force Base, Arkansas. Military Judge: Nancy J. Paul.

Approved sentence: Dishonorable discharge, confinement for 1 year and 10 months, and reduction to E-1.

Appellate Counsel for the Appellant: Lieutenant Colonel Gail E. Crawford; Lieutenant Colonel Darrin K. Johns; Major Shannon A. Bennett; Major Nicholas W. McCue; and Major Zaven T. Saroyan.

Appellate Counsel for the United States: Colonel Don M. Christensen; Lieutenant Colonel Jeremy S. Weber; Major Rhea A. Lagano; Major Michael T. Rakowski; Major Daniel J. Breen; and Gerald R. Bruce, Esquire.

Before

HARNEY, HECKER, and MITCHELL
Appellate Military Judges

OPINION OF THE COURT
UPON REMAND

This opinion is subject to editorial correction before final release.

PER CURIAM:

A general court-martial composed of officer and enlisted members convicted the appellant, contrary to his pleas, of one specification of aggravated assault (as a lesser included offense (LIO) of involuntary manslaughter); two specifications of conspiracy; and one specification each of obstructing justice, participating in gang initiation rituals,

using marijuana, and failing to obey a lawful general regulation, in violation of Articles 128, 81, 134, 112a and 92, UCMJ, 10 U.S.C. §§ 928, 881, 934, 912a, 892. He was acquitted of two specifications of involuntary manslaughter and one specification of being an accessory after the fact, under Articles 119 and 78, UCMJ, 10 U.S.C. §§ 919, 878. The adjudged sentence consisted of a dishonorable discharge, confinement for 2 years, and reduction to E-1. During clemency, the convening authority dismissed the marijuana use specification after finding the evidence insufficient, and then approved only so much of the sentence as provided for a dishonorable discharge, confinement for 1 year and 10 months, and reduction to E-1.

We previously affirmed the findings and sentence. *United States v. Jones*, ACM 37528 (A.F. Ct. Crim. App. 29 January 2013) (unpub. op.). In a summary disposition, the Court of Appeals for the Armed Forces (CAAF) reversed our decision and set aside the finding of guilty to obstructing justice in light of *United States v. Goings*, 72 M.J. 202 (C.A.A.F. 2013) and *United States v. Gaskins*, 72 M.J. 225 (C.A.A.F. 2013). *United States v. Jones*, 72 M.J. ___ No. 13-0397/AF (Daily Journal 14 August 2013). The CAAF also set aside the sentence and returned the record of trial to The Judge Advocate General for remand to this court, directing us to either order a rehearing on the affected charge and the sentence, or to dismiss that specification and reassess the sentence. *Id*.

Rather than order a rehearing, we will dismiss the affected specification and reassess the sentence. We agree with the appellant that we can reliably determine to our satisfaction that, absent the error, the sentence adjudged at the trial level would have been at least a certain severity, as a sentence of that severity or less will be free of the prejudicial effects of the error. *United States v. Sales*, 22 M.J. 305, 308 (C.M.A. 1986). We have determined that we can discern the effect of the error identified by our superior court and will reassess the sentence on the basis of that error, the entire record, and in accordance with the principles of *Sales* and *United States v. Moffeit*, 63 M.J. 40 (C.A.A.F. 2006), to include the factors identified by Judge Baker in his concurring opinion in *Moffeit*.

The appellant remains convicted of multiple serious offenses stemming from his involvement in gang activity. While stationed in Germany, the appellant became a leader in a local faction of the Gangster Disciples, a group comprised of current and former enlisted personnel from the Air Force and Army who used the same gang symbols, clothing, and rituals as a criminal street gang from Chicago called Gangster Disciples Nation. For this, he was convicted of violating an Air Force Instruction that prohibits active participation in a group that advocates the use of force or violence and conspiring with his fellow gang members to do so. To be initiated into this gang, a prospective member had to endure being "jumped into" the organization, meaning he was required to stand inside a circle of group members who then hit him continuously while he passively

endured the beating. The appellant was convicted of participating in multiple initiations where members of the armed forces were beaten.

The appellant was also convicted for his involvement in the death of an Army solider during a gang initiation ritual in July 2005. The appellant and other members of the gang beat and kicked the soldier, causing massive blunt force trauma that led to his death several hours later. For his role, the appellant was convicted of aggravated assault with means likely to produce death or grievous bodily harm. He was also convicted of conspiring with other gang members to obstruct justice, after the soldier's death, by destroying evidence related to the gang.

The specification affected by our superior court's decision alleged the appellant obstructed justice by wrongfully endeavoring to influence the actions of other members of the gang by telling them, "[E]verybody better shut up, don't be talking and anybody that talks can cancel Christmas," or words to that effect. The panel convicted the appellant of this offense, as well as using marijuana on divers occasions.

For all these offenses, the panel sentenced the appellant to a dishonorable discharge, confinement for 2 years, and reduction to E-1. The convening authority then dismissed the marijuana use specification and lowered the appellant's confinement to 1 year and 10 months. The appellant remains convicted of multiple serious offenses, including his participation in a group beating that caused the death of an Army soldier and his extensive participation in illegal gang activities. Given that, and having considered the entire record of trial and the principles of *Sales* and *Moffeit*, we are satisfied that if the appellant had not been convicted of the obstruction charge, the panel would have sentenced the appellant to a dishonorable discharge, confinement for 1 year and 10 months, and reduction to E-1, and that the convening authority would again have lowered that confinement by two months when he dismissed the marijuana specification.

Accordingly, we affirm a sentence of a dishonorable discharge, confinement for 1 year and 8 months, and reduction to E-1. We also find this sentence is appropriate, as required by Article 66(c), UCMJ, 10 U.S.C. § 866(c). This reassessed sentence is therefore purged of prejudicial error and appropriate for the appellant's offenses. *Sales*, 22 M.J. at 307-08.

Appellate Delay

The convening authority took action in the appellant's case 220 days after the court-martial was completed and our court completed its review of his case 1224 days after it was docketed, both of which create the "presumption of unreasonable delay" in the post-trial processing of his case. *United States v. Moreno*, 63 M.J. 129 (C.A.A.F. 2006). Through supplemental assignments of error raised during our initial review of this case, the appellant contended his due process rights have been violated by these delays

and requested relief in the form of disapproval of the dishonorable discharge, citing *Moreno* and *United States v. Tardif*, 57 M.J. 219 (C.A.A.F. 2002). In our initial decision, we found the appellate delay in this case to be facially unreasonable, but harmless beyond a reasonable doubt after considering the totality of the circumstances and the entire record. *See Moreno*, 63 M.J. at 135-36.

Although he did not petition our superior court regarding that aspect of our decision, the appellant has raised this issue again following our superior court's remand. Even if consideration of this issue falls within the scope of the CAAF's remand order, our prior conclusion is not changed by the subsequent events in the appellant's case and we find relief is not otherwise warranted. *United States v. Harvey*, 64 M.J. 13, 24 (C.A.A.F. 2006); *United States v. Tardif*, 57 M.J. 219, 225 (C.A.A.F. 2002).

Conclusion

The finding of guilty to Specification 1 of Charge III is set aside and dismissed. The findings, as modified, and sentence, as reassessed, are correct in law and fact, and no error materially prejudicial to the substantial rights of the appellant occurred. Articles 59(a) and 66(c), UCMJ, 10 U.S.C. §§ 859(a), 866(c). Accordingly, the modified findings and reassessed sentence are

AFFIRMED.

FOR THE COURT

STEVEN LUCAS
Clerk of the Court