

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

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UNITED STATES

v.

Airman First Class **BRANDON D. KEARNS**  
United States Air Force

ACM S31597

21 May 2009

Sentence adjudged 03 November 2008 by SPCM convened at Shaw Air Force Base, South Carolina. Military Judge: Terry O'Brien (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 75 days, and reduction to E-1.

Appellate Counsel for the Appellant: Major Lance J. Wood and Dwight H. Sullivan, Esquire.

Appellate Counsel for the United States: Major Jeremy S. Weber, Major Kimani R. Eason, and Gerald R. Bruce, Esquire.

Before

FRANCIS, HEIMANN, and THOMPSON  
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

Consistent with his pleas, the appellant was found guilty of fraudulent enlistment by lying about pre-service cocaine use, and use of cocaine on two separate occasions, in violation of Articles 83 and 112a, UCMJ, 10 U.S.C. §§ 883, 912a. The military judge sentenced the appellant to a bad-conduct discharge, 75 days of confinement, and reduction to E-1. The convening authority approved the sentence as adjudged. On appeal, the appellant raises two issues related to the post-trial processing of his case.

First, the appellant asserts, and the appellee concedes, that his court-martial order reflects the wrong end date of his offense as to the Specification of Charge II, the

fraudulent enlistment charge. The appellee also agrees that the proper solution is the promulgation of a corrected order. Preparation of a corrected court-martial order, properly reflecting the correct end date of the Specification of Charge II is hereby directed. *United States v. Smith*, 30 M.J. 1022, 1028 (A.F.C.M.R. 1990).

Second, the appellant contends that the 51-day delay in docketing his case with this Court, after action by the convening authority, 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). The 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.\* The appellant specifically refers the Court to *Tardif* for the proposition that we have the authority to grant relief even if we find no prejudice. *Tardif*, 57 M.J. at 224. Like the appellant, we too find *Moreno* violations unacceptable. But as the appellant essentially concedes, it is obvious that the minor delay in docketing this case with the Court is harmless beyond a reasonable doubt. *See United States v. Allison*, 63 M.J. 365, 370 (C.A.A.F. 2006).

We also agree with the appellant that under *Tardif*, this Court has the “authority under Article 66(c)[, UCMJ, 10 U.S.C. § 866(c),] to grant relief for excessive post-trial delay without a showing of ‘actual prejudice’ . . . if it deems relief appropriate.” *Tardif*, 57 M.J. at 224 (quoting *United States v. Collazo*, 53 M.J. 721, 727 (Army Ct. Crim. App. 2000)). Having considered the totality of the circumstances and the entire record of trial, 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. This is particularly so in light of the otherwise impressive job by the installation in processing the record of this case. 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.

### *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).

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\* Under *United States v. Moreno*, 63 M.J. 129, 142 (C.A.A.F. 2006), the record should have been docketed with this Court within 30 days of the convening authority’s action.

Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL



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