

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class MATTHEW B. MCKEEVER
United States Air Force**

ACM 38026

14 March 2013

Sentence adjudged 18 August 2011 by GCM convened at Beale Air Force Base, California. Military Judge: W. Shane Cohen (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 455 days, reduction to E-1, and a reprimand.

Appellate Counsel for the Appellant: Major Daniel E. Schoeni and Major Grover H. Baxley.

Appellate Counsel for the United States: Colonel Don M. Christensen; Major Jason S. Osborne; 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 one specification of violating a lawful general order and ten specifications of wrongful use, possession, and introduction of a controlled substance, in violation of Articles 92 and 112a, UCMJ, 10 U.S.C. §§ 892, 912a. The court sentenced him to a bad-conduct discharge, confinement for 455 days, reduction to E-1, and a reprimand. The convening authority approved the sentence as adjudged. Before this Court, the appellant argues that he was denied meaningful relief before the Air Force Clemency and Parole Board (AFCPB). We disagree and affirm.

Background

On 18 August 2011, the appellant was taken into custody following his court-martial conviction. On 11 October 2011, the convening authority took action approving the findings and sentence as adjudged. The General Court-Martial Order listed the AFCPB on the distribution list. The appellant's case was docketed with this Court on 24 October 2011. On 4 April 2012, the AFCPB approved the appellant's parole, effective May 2012. In his affidavit, the appellant argues that it took 177 days, from 11 October 2011 to 5 April 2012, to transmit the convening authority's action to the AFCPB. As a result, his original parole board was delayed for 47 days, from 18 February 2012 to 5 April 2012. He claims he remained in jail when he would have otherwise been released on parole. To support his claim, the appellant relies on *United States v. Tardif*, 57 M.J. 219 (C.A.A.F. 2002).

Discussion

We have reviewed the record of trial, the briefs of the parties, and the affidavits submitted by both sides. We conclude that the appellant's claim is without merit. *United States v. Mathias*, 25 M.J. 356 (C.M.A. 1987). The appellant has not offered any evidence to support his assertion that the convening authority delayed transmitting the action to the AFCPB or that the AFCPB might have acted prior to 4 April 2012 on his parole. Moreover, the review of "post-trial confinement and release conditions . . . is limited to the impact of such conditions on the findings and the sentence." *United States v. Pena*, 64 M.J. 259, 264 (C.A.A.F. 2007); *see also United States v. Towns*, 52 M.J. 830, 833 (A.F. Ct. Crim. App. 2000), *aff'd*, 55 M.J. 361 (C.A.A.F. 2001) (mem.).

Finally, the appellant was not denied speedy post-trial processing. The convening authority took action within 54 days of the announcement of the sentence, well within the 120 day timeline established by our superior court in *United States v. Moreno*, 63 M.J. 129, 142 (C.A.A.F. 2006). The appellant's case was docketed with this Court on 24 October 2011, within the 30 day timeline set forth in *Moreno. Id.* Therefore, we deny the appellant's claim for relief, and conclude that a fact-finding hearing is not necessary. *United States v. Ginn*, 47 M.J. 236 (C.A.A.F. 1997).

Conclusion

The 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, 10 U.S.C. § 866(c);

United States v. Reed, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the findings and the sentence are

AFFIRMED.



FOR THE COURT

A handwritten signature in black ink, appearing to read "Laquitta J. Smith".

LAQUITTA J. SMITH
Appellate Paralegal Specialist