UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Captain KENNETH B. PLANTS
United States Air Force

ACM 35666

28 June 2005

Sentence adjudged 11 March 2003 by GCM convened at Andersen Air Force Base, Guam. Military Judge: David F. Brash (sitting alone).

Approved sentence: Dismissal and confinement for 66 months.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, and Major Jennifer K. Martwick.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Major Shannon J. Kennedy.

Before

STONE, ORR, and MOODY
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignment of error raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), and the government's reply thereto. Trial in the appellant's case began on 29 July 2002. On 30 July 2002, the military judge granted a defense motion to dismiss the charges and specifications due to a violation of the appellant's right to a speedy trial under Article 10, UCMJ, 10 U.S.C. § 810. On 30 September 2002, this Court set aside the ruling of the military judge and remanded the case for further proceedings. *United States v. Plants*, 57 M.J. 664 (A.F. Ct. Crim. App. 2002). Our superior court denied review on 6 February 2003. *United States v. Plants*, 58 M.J. 181 (C.A.A.F. 2003). At a subsequent docketing conference, the government averred that it would be ready to proceed with trial on 19 February 2003. The defense requested a trial date of 10 March 2003. Trial resumed on that date.

The appellant alleges that the government did not proceed with reasonable diligence in bringing the case to trial following this Court's reinstatement of the charges. Specifically, the appellant contends that his right to a speedy trial was violated because the government could have proceeded to trial while the appellant was "waiting for months on end" to see if the Court of Appeals for the Armed Forces was going to grant review of his case.

This issue was raised at trial. We have examined the record and conclude that the military judge's findings of fact are not clearly erroneous. *See United States v. Springer*, 58 M.J. 164 (C.A.A.F. 2003); *United States v. Burris*, 21 M.J. 140 (C.M.A. 1985). We adopt them as our own for purposes of ruling on the assignment of error. We conclude that the government proceeded with reasonable diligence in bringing this case to trial and hold that the appellant has not been denied his right to a speedy trial, whether under Article 10, UCMJ, or the Sixth Amendment to the United States Constitution. *See Barker v. Wingo*, 407 U.S. 514 (1972); *United States v. Birge*, 52 M.J. 209, 212 (C.A.A.F. 1999); *United States v. Kossman*, 38 M.J. 258, 262 (C.M.A. 1993).

The approved findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant was committed. Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). On the basis of the entire record, the approved findings and sentence are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court