

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class NICHOLAS W. WOLFER
United States Air Force**

ACM 35380

6 June 2003

Sentence adjudged 26 June 2001 by GCM convened at Travis Air Force Base, California. Military Judge: Ronald R. Sticka.

Approved sentence: Bad-conduct discharge, confinement for 4 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, and Captain Antony B. Kolenc.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Lance B. Sigmon, and Major Jennifer R. Rider.

Before

VAN ORSDOL, STONE, and ORR, V.A.
Appellate Military Judges

OPINION OF THE COURT

STONE, Judge:

At a general court-martial convened at Travis Air Force Base, California, the appellant pled guilty to engaging in illicit drug activities in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. Accordingly, he was found guilty of using lysergic acid diethylamide (LSD) and 3,4-methylenedioxymethamphetamine (ecstasy) and distributing ecstasy to three of his friends. Art. 112a, UCMJ. A panel of officer and enlisted members sentenced the appellant to a bad-conduct discharge, confinement for 4 months, and reduction to the grade of E-1. The convening authority approved the findings and sentence without modification.

The appellant asks this Court to disapprove two months of confinement because the post-trial processing of this case was delayed 15 months. We disagree and affirm.

Initially, post-trial processing ran smoothly and expeditiously. The appellant's court-martial ended on 26 June 2001, the military judge authenticated the record of trial on 29 July 2001, and the general court-martial convening authority took action on 20 August 2001. Nearly a year after action by the convening authority, personnel in the Military Justice Division (JAJM) of the Air Force Legal Services Agency realized that the original record of trial was not forwarded to their office in accordance with Rule for Courts-Martial (R.C.M.) 1111 and Air Force Instruction 51-201, *Administration of Military Justice*, ¶ 8.14 (2 Nov 1999). JAJM notified the general court-martial convening authority to follow the procedures set forth in R.C.M. 1104(c) concerning the loss of the original record. During the authentication process of the substitute original, the original and two copies of the record of trial were found. They apparently had been mistakenly mailed to the trial defense counsel for the appellant. JAJM officially received the original record on 18 November 2002. The appellant filed an assignment of errors on 12 February 2003, and the government responded on 6 March 2003. This Court has expedited its review of the case.

The appellant is entitled to a speedy post-trial review of his case. *United States v. Hudson*, 46 M.J. 226, 227 (1997). Pursuant to our authority under Article 59(a), UCMJ, 10 U.S.C. § 859(a), the “legal standard applicable to such delay is demonstration by appellant of some real harm or legal prejudice.” *Hudson*, 46 M.J. at 227. Even if we find no prejudice, pursuant to our authority under Article 66(c), UCMJ, 10 U.S.C. § 866(c), we have the authority to “tailor an appropriate remedy, if any is warranted, to the circumstances of the case.” *United States v. Tardif*, 57 M.J. 219, 225 (2002). Appellate relief under Art. 66(c), UCMJ, “should be viewed as the last recourse to vindicate, where appropriate, an appellant’s right to timely post-trial processing and appellate review.” *Id.*

The post-trial delay in this case is far from acceptable. However, the appellant alleges no prejudice, and we are unable to discern any from our own review of the record. Further, we conclude that the facts and circumstances reflected in the record do not warrant relief under Art. 66(c), UCMJ. In this regard, we note that the convening authority promptly considered the appellant’s clemency matters. In addition, there is no indication whatsoever that any potential assignments of error were jeopardized. Finally, this Court’s expedited review is a meaningful method to vindicate the appellant’s right to timely post-trial processing and appellate review.

The approved findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. Art. 66(c), UCMJ; *United States v. Reed*, 54 M.J. 37, 41 (2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

FELECIA M. BUTLER, TSgt, USAF
Chief Court Administrator