******CORRECTED COPY – DESTROY ALL OTHERS******

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

No. ACM S32594

UNITED STATES
Appellee

v.

Jermel D. MOODY-NEUKOM
Senior Airman (E-4), U.S. Air Force, *Appellant*

Appeal from the United States Air Force Trial Judiciary

Decided 16 December 2019

Military Judge: Shaun S. Speranza.

Sentence: Sentence adjudged 2 April 2019 by SpCM convened at Hill Air Force Base, Utah. Sentence entered by military judge on 22 April 2019: Bad-conduct discharge, confinement for 1 month, and reduction to E-1.

For Appellant: Major Stuart J. Anderson, USAF.

Before J. JOHNSON, POSCH, and KEY, *Appellate Military Judges.*

This is an unpublished opinion and, as such, does not serve as precedent under AFCCA Rule of Practice and Procedure 30.4.

PER CURIAM:

A special court-martial composed of a military judge alone convicted Appellant, in accordance with his pleas pursuant to a pretrial agreement, of one specification of wrongfully using 3,4-methylenedioxymethamphetamine (MDMA) and one specification of wrongfully using cocaine, both in violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 912a. The military judge sentenced Appellant to a bad-conduct discharge, confinement for one month, and reduction to the grade of E-1. The convening authority

elected to take no action with respect to the findings or sentence. *See* R.C.M. 1109.[1]

Appellant's case was submitted to this court for review on its merits without any assignments of error. We have reviewed the record of trial and have not found prejudicial error. Nevertheless, certain aspects of the record of trial in this case warrant comment.

The offenses for which Appellant was found guilty and sentenced occurred between on or about 19 November 2018 and on or about 4 December 2018. The convening authority referred the Charge and Specifications for trial by special court-martial on 12 March 2019. Accordingly, Appellant's court-martial was generally subject to the substantive provisions of the UCMJ and sentencing procedures in effect prior to 1 January 2019; but certain procedural provisions of the Rules for Courts-Martial (R.C.M.) provided for in the 2019 version of the *Manual for Courts-Martial* were applicable. *See generally* Exec. Order 13,825, 83 Fed. Reg. 9889 (8 Mar. 2018); *Manual for Courts-Martial, United States* (2019 ed.); *Manual for Courts-Martial, United States* (2016 ed.) (2016 *MCM*). Two matters related to the implementation of these new procedures merit brief discussion.

First, after the court-martial adjourned, the military judge signed a Statement of Trial Results (STR) and inserted it into the record of trial in accordance with R.C.M. 1101(a). The rule lists a number of required contents, including *inter alia* "the command by which [the court-martial] was convened." R.C.M. 1101(a)(3). The STR in this case included most of the required contents, and it indicated the squadron to which Appellant was assigned, but it omitted the command which convened the court-martial. However, we find no colorable showing of possible prejudice from this minor omission, *see United States v. Scalo*, 60 M.J. 435, 436–37 (C.A.A.F. 2005) (citing *United States v. Kho*, 54 M.J. 63, 65 (C.A.A.F. 2000)), and we do not find it necessary to direct corrective action pursuant to R.C.M. 1112(d)(2).[2]

Second, under the new procedures, the convening authority is no longer required to take action on the results of every court-martial. *See* R.C.M. 1109; R.C.M. 1110. Instead, as in this case, the convening authority may, after con-

---

[1] Unless indicated otherwise, all references in this opinion to the Uniform Code of Military Justice and Rules for Courts-Martial are to the *Manual for Courts-Martial, United States* (2019 ed.).

[2] We note the Statement of Trial Results in this case generally conforms to the template provided in Air Force Instruction (AFI) 51-201, *Administration of Military Justice*, Figure A9.1 (18 Jan. 2019, as amended by AFGM 2019-02, 30 Oct. 2019).

sulting with the staff judge advocate or legal advisor and considering any matters timely submitted by the accused or a crime victim, decline to take action on the sentence. R.C.M. 1109(c), (d), (g). After that decision is communicated to the military judge, the military judge enters the judgment of the court into the record of trial, a process known as "entry of judgment." R.C.M. 1111(a). The entry of judgment takes the place of action by the convening authority under the former procedures in the sense that it "terminates the trial proceedings and initiates the appellate process." R.C.M. 1111(a)(2). After the military judge enters the judgment, the court reporter prepares and certifies the record of trial and attaches additional matters to the record for appellate review. R.C.M. 1112(c), (f).

The advent of entry of judgment in place of convening authority action raises questions about the continued application of the decision of the United States Court of Appeals for the Armed Forces (CAAF) in *United States v. Moreno*, 63 M.J. 129, 142 (C.A.A.F. 2006). In *Moreno*, the CAAF identified thresholds for facially unreasonable delay for particular segments of the post-trial and appellate process. *Id.* at 141–43. Specifically, the CAAF established a presumption of facially unreasonable delay where the convening authority did not take action within 120 days of the completion of trial, where the record was not docketed with the court of criminal appeals within 30 days of the convening authority's action, or where the court of criminal appeals did not render a decision within 18 months of docketing. *Id.* at 142. Because, under the new rules, a convening authority is no longer required to take action on all court-martial results, in many cases—like Appellant's—there may be no convening authority action, removing one of the key elements from the *Moreno* analysis.

We presume the due process right to timely post-trial and appellate review the CAAF recognized and sought to safeguard in *Moreno* endures under the new procedures. *Cf.* 10 U.S.C. § 866(d)(2) (court of criminal appeals "may provide appropriate relief if the accused demonstrates . . . excessive delay in the processing of the court-martial after the judgment was entered into the record under section 860c of this title (article 60c)"); Air Force Instruction (AFI) 51-201, *Administration of Military Justice*, ¶ 20.2.2. et seq. (18 Jan. 2019, as amended by AFGM 2019-02, 30 Oct. 2019) (requiring a "completed" record of trial within 120 days of sentence or acquittal and forwarding of the record to the "office for processing appellate review" within 14 days of completion). However, if Appellant's case is any guide, adapting the *Moreno* analysis to the new rules will not be a simple matter of substituting the military judge's "entry of judgment"—or the convening authority's decision whether to take action on the trial results, or the certification or completion of the record of trial, or any other post-trial event—into the place of "convening authority action" within the *Moreno* framework for determining facially unreasonable delay. Under the prior rules, the convening authority generally took action *after* the record of

trial was prepared. *See, e.g.*, R.C.M. 1105(c)(1) (2016 *MCM*) (defense clemency matters are not due until—at a minimum—ten days after accused is served with authenticated record of trial). By contrast, in Appellant's case, consistent with R.C.M. 1112(b) and (c), the convening authority declined to take action and the military judge attached the entry of judgment into the record *before* the court reporter could prepare and certify the record of trial. Under the current rule, the military judge cannot enter judgment until the convening authority's decision on action, because the military judge must account for any such action in the entry of judgment; and the court reporter cannot certify the record of trial as complete until the military judge enters judgment, because the entry of judgment is required to be in the record of trial. *See* R.C.M. 1110(e); R.C.M. 1111(b); R.C.M. 1112(b), (c).

In the case before us, Appellant's trial concluded on 2 April 2019; the Defense submitted clemency matters on 9 April 2019; the convening authority elected not to take action on 15 April 2019; the military judge signed the entry of judgment on 22 April 2019; the court reporter certified the record of trial and a verbatim written transcript of the proceedings on 30 April 2019; and the record was docketed with this court on 30 May 2019. For the reasons stated above, it is far from clear to us that either the 38 days that elapsed between the entry of judgment and docketing, or the 45 days that elapsed between the convening authority's decision regarding action and docketing, implicate *Moreno's* presumption of facially unreasonable delay where the interval between convening authority action and docketing exceeds 30 days. Furthermore, we note that the entire period from the end of Appellant's trial to docketing with this court took 58 days, whereas the aggregated *Moreno* standards effectively created a threshold of 150 days for a facially unreasonable delay over the same period. *See Moreno*, 63 M.J. at 142.[3] Nevertheless, assuming *arguendo* that there was a facially unreasonable delay, we have assessed whether there was a due process violation by considering the four factors the CAAF identified in *Moreno*: (1) the length of the delay; (2) the reasons for the delay; (3) the appellant's assertion of his right to a timely review; and (4) prejudice to the appellant. *Id*. at 135 (citations omitted). We have also considered that where an appellant has not shown prejudice from the delay, there is no due process violation unless the delay is so egregious as to "adversely affect the public's perception of the fairness and integrity of the military justice system." *United States v. Toohey*, 63 M.J. 353, 362 (C.A.A.F. 2006). We discern no prejudice, and we find no violation of Appellant's due process rights.

---

[3] We note AFI 51-201, ¶ 20.2.2 and ¶ 20.2.3 together require that the "completed" record be forwarded to the "office for processing appellate review" within 134 days of announcement of sentence or acquittal.

The findings and sentence entered are correct in law and fact, and no error materially prejudicial to Appellant's substantial rights occurred. Articles 59(a) and 66(d), Uniform Code of Military Justice, 10 U.S.C. §§ 859(a), 866(d). Accordingly, the approved findings and sentence are **AFFIRMED**.

FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court