

**UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS**

No. ACM 40804

UNITED STATES

Appellee

v.

Christopher M. TOOLAN

Staff Sergeant (E-5), U.S. Air Force, *Appellant*

Appeal from the United States Air Force Trial Judiciary

Decided 20 August 2026

Military Judge: Pilar G. Wennrich; Tyler B. Musselman;¹ Sterling C. Pendleton (arraignment); Jeremy L. Mooney.

Sentence: Sentence adjudged on 22 August 2024 by GCM convened at Royal Air Force Lakenheath, United Kingdom. Sentence entered by military judge on 18 October 2024: Dishonorable discharge, confinement for 30 years, reduction to the grade of E-1, and a reprimand.

For Appellant: Major Jordan L. Grande, USAF; Dwight H. Sullivan, Esquire.

For Appellee: Major Vanessa Bairos, USAF; Jocelyn Q. Wright, USAF; Steven R. Kaufman, Esquire; Mary Ellen Payne, Esquire.

Before MORGAN, GRUEN, and ORTIZ, *Appellate Military Judges*.

Judge ORTIZ delivered the opinion of the court, in which Chief Judge MORGAN and Senior Judge GRUEN joined.

¹ Judge Wennrich and Judge Musselman conducted hearings concerning applications for prereferral warrants pursuant to Article 30a, Uniform Code of Military Justice, 10 U.S.C. § 830a.

This is an unpublished opinion and, as such, does not serve as precedent under AFCCA Rule of Practice and Procedure 30.3.

ORTIZ, Judge:

A military judge sitting as a general court-martial convicted Appellant, in accordance with his pleas and pursuant to a plea agreement, of two specifications of rape of a child, and five specifications of sexual abuse of a child under the age of 16 years, in violation of Article 120b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920b; two specifications of producing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. § 934; and one specification of possessing child pornography in violation of Article 134, UCMJ.² Appellant was sentenced to a dishonorable discharge, confinement for 30 years, reduction to the grade of E-1, and a reprimand. The convening authority took no action on the findings, deferred the reduction in grade and automatic forfeitures until the date the military judge signed the entry of judgment, and waived automatic forfeitures for a period of six months, release of confinement, or expiration of term of service, whichever was sooner, to be paid to Appellant's spouse for the benefit of Appellant's two dependent children. The convening authority provided the language for the reprimand.

Appellant raises one issue on appeal, which we have reworded: whether Appellant is entitled to relief for delay in post-trial processing. We find no error that materially prejudiced Appellant's substantial rights, and we affirm the findings and the sentence.

I. BACKGROUND

The basis of the charges to which Appellant pleaded guilty stems from multiple offenses he committed against children, not his own, while he was stationed at Ramstein Air Force Base, Germany, and Royal Air Force Lakenheath, United Kingdom, and for the production and possession of child pornography found on various media in Appellant's possession.

The military judge sentenced Appellant on 22 August 2024, and the court reporter certified the record of trial (ROT) as complete on 21 October 2024.

² All punitive offenses, with the exception of Specifications 1, 2 and 6 of Charge I (rape of SG, rape of EW, and sexual abuse of HB), in violation of Article 120b, UCMJ, are to the *Manual for Courts-Martial, United States* (2016 ed.). Punitive offenses under Specifications 1, 2 and 6 of Charge I are to the *Manual for Courts-Martial, United States* (2019 ed.) (2019 *MCM*). Unless otherwise noted, all other references to the UCMJ and Rules for Courts-Martial are to the 2019 *MCM*.

Three separate chronologies³ in the record documenting post-trial timelines indicate that the ROT was subject to various administrative actions after certification including numerous reviews; routing, mailing, and distribution of copies; redaction of information as required by Article 140a, UCMJ, 10 U.S.C. § 940a; and numerous corrections made by the installation legal office and the legal office to the Numbered Air Force (NAF). No further action on the ROT is reflected after 27 February 2025.⁴

Appellant’s case was docketed with this court on 8 April 2025—229 days after Appellant was sentenced.

II. DISCUSSION

1. Law

“[C]onvicted servicemembers have a due process right to timely review and appeal of [their] courts-martial convictions.” *United States v. Moreno*, 63 M.J. 129, 135 (C.A.A.F. 2006) (citations omitted). We review de novo whether an appellant is entitled to relief for post-trial delay. *United States v. Livak*, 80 M.J. 631, 633 (A.F. Ct. Crim. App. 2020) (citing *Moreno*, 63 M.J. at 135).

In *Livak*, this court established an aggregated sentence-to-docketing 150-day threshold for facially unreasonable delay in cases that were referred to trial on or after 1 January 2019. 80 M.J. at 633. If there is a presumptive or an otherwise facially unreasonable delay, we examine the matter under the four non-exclusive factors set forth in *Barker v. Wingo*, 407 U.S. 514, 530 (1972): “(1) the length of the delay; (2) the reasons for the delay; (3) the appellant’s assertion of the right to timely review and appeal; and (4) prejudice.” *Moreno*, 63 M.J. at 135 (citing *Barker*, 407 U.S. at 530). “We analyze each factor and make a determination as to whether that factor favors the Government or the appellant.” *Id.* at 136 (citation omitted). Then, we balance our analysis of the factors to determine whether a due process violation occurred. *Id.* (citing *Barker*, 407 U.S. at 533) (“Courts must still engage in a difficult and sensitive balancing process.”). “No single factor is required for finding a due process

³ There are three chronologies included in the ROT entitled “Moreno Chronology,” “NAF/JA Chronology,” and “Court Reporter Chronology.” Because neither party has objected to their consideration, we have considered all three documents in our decision. See *United States v. Jones*, No. ACM 39766, 2021 CCA LEXIS 73, at *36 n.9 (A.F. Ct. Crim. App. 17 Feb. 2021) (unpub. op.) (noting consideration of differing chronologies because neither party raised objections in their briefs).

⁴ The final entry on the “Moreno Chronology” states, “CP made corrections to ROT cover sheets & NAF eROT corrections.”

violation and the absence of a given factor will not prevent such a finding.” *Id.* (citation omitted). However, 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).

Independent of any due process violation, this court may provide appropriate relief where there is “excessive delay in the processing of the court-martial after the judgment was entered into the record.” *United States v. Valentin-Andino*, 85 M.J. 361, 364 (C.A.A.F. 2025) (citing Article 66(d)(2), UCMJ, 10 U.S.C. § 866(d)(2)).

If a Court of Criminal Appeals (CCA) decides relief is warranted for excessive post-trial delay under Article 66(d)(2), UCMJ, “that relief must be ‘appropriate,’ meaning it must be suitable considering the facts and circumstances surrounding that case.” *Id.* at 367. “This does not require a [CCA] to provide relief that is objectively meaningful, and it does not obligate a [CCA] to explain its reasoning regarding the relief it does provide.” *Id.*

2. Analysis

Appellant’s case was docketed with this court 229 days after sentencing, exceeding the 150-day *Livak* standard for facially unreasonable delay by 79 days. Accordingly, we have considered the *Barker* factors under the circumstances of this case but find no violation of Appellant’s due process rights. We also find that Appellant is not entitled to relief for excessive post-trial delay under Article 66(d)(2), UCMJ.

In addressing the length and reason for delay, the Government argues that the record reflects consistent progress by the legal offices and that the ROT required extensive processing due to its complexity and need for redactions to protect the minor victims. We are unpersuaded by this argument. While we agree that the majority of time—a period of 189 days⁵—reflects consistent work and forward progression on the ROT, the Government provides no explanation for why it required an additional 40 days to docket the case with this court. *See United States v. Doolin*, No. ACM 40745, 2026 CCA LEXIS 188, at *15 (A.F. Ct. Crim. App. 17 Apr. 2026) (unpub. op.) (finding the Government’s lack of explanation for 110-days of the 244-day delay to docketing was not reasonable). In light of this unexplained inaction by the Government, we find the first two *Barker* factors weigh in favor of Appellant.

⁵ This is time between Appellant’s sentencing on 22 August 2024 to the last action listed on the “Moreno Chronology” of 27 February 2025.

Despite this delay, we rely on the remaining *Barker* factors to find no violation of Appellant’s due process rights. Appellant did not assert his right to timely appellate review or assert prejudice from this delay. The length of the delay is not so egregious as to impugn the integrity of the military justice system. Additionally, the delay did not result in a form of cognizable prejudice recognized by *Moreno*, such as: (1) oppressive incarceration; (2) “particularized anxiety or concern that is distinguishable from the normal anxiety experienced by prisoners awaiting an appellate decision;” or (3) impairment of Appellant’s grounds for appeal or ability to present a defense at a rehearing. 63 M.J. at 138–40 (citations omitted). Because we find no particularized prejudice, and the delay is not so egregious as to adversely affect the public’s perception of the fairness and integrity of the military justice system, we likewise find no due process violation. *See Toohey*, 63 M.J. at 362.

Appellant’s sole argument is that he is entitled to “meaningful relief” under Article 66(d)(2), UCMJ, because the Department of the Air Force’s “institutional neglect” is evidenced by its high number of untimely docketed cases in Fiscal Year (FY) 2024 when compared to the Department of the Navy, and the Air Force’s “explosion” of untimely cases docketed after the end of FY 2024.⁶ Even if there was a trend of untimely docketed cases, Appellant has not shown that the 229-day delay in this case reflected the Government’s indifference, gross or otherwise, to post-trial processing. *Cf. United States v. Cassaberry-Folks*, No. ACM 40444, 2024 CCA LEXIS 500, at 50–52 (A.F. Ct. Crim. App. 22 Nov. 2024) (unpub. op.) (finding that 412 days of post-trial delay was in “intolerably close proximity to ‘gross indifference’” to warrant relief under Article 66(d)(2), UCMJ). Nor do we find a general comparison of docketing rates between sister services sufficient to establish entitlement to Article 66(d)(2), UCMJ, relief under the particular facts and circumstances of this case. *See United States v. Valentin-Andino*, No. ACM 40185 (f rev), 2024 CCA LEXIS 223, at *19 (A.F. Ct. Crim. App. 7 Jun. 2024) (unpub. op.) (viewing entitlement to relief for excessive delay based on “all the facts and circumstances of [the] [a]ppellant’s case”). We therefore conclude such relief is not warranted.

III. CONCLUSION

The findings and sentence as entered are correct in law and fact, and no error materially prejudicial to Appellant’s substantial rights occurred. Articles

⁶ Appellant claims that the Department of the Air Force failed to docket six cases within the 150-day standard in FY 2024, whereas the Department of the Navy failed to meet this threshold only three times that same year. Appellant additionally claims that, in the 12 months before the brief was filed, at least 20 Air Force cases were docketed in excess of the 150-day standard.

59(a) and 66(c), UCMJ, 10 U.S.C. §§ 859(a), 866(c). *Manual for Courts-Martial, United States* (2019 ed.).⁷ Accordingly, the findings and sentence are **AFFIRMED**.



FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court

⁷ During our review of Appellant's case, we identified the following discrepancies in the record of trial:

- (1) The court reporter failed to list Prosecution Exhibits 33 and 44 on the Exhibit Index of the record of trial (ROT), despite these exhibits being admitted as evidence. *See* Department of Air Force Manual (DAFMAN) 51-203, *Records of Trial*, ¶ 2.3 (21 April 2021, as amended by DAFGM 2026-01, 14 Jul. 2026) ("The court reporter must create and maintain an Index of Exhibits Admitted and include it as part of the ROT in accordance with R.C.M. 1112(b)(6).").
- (2) The court reporter incorrectly indicates on the Exhibit Index of the ROT that Appellate Exhibit I is a 70-page document when in fact it is 69 pages in length.
- (3) Prosecution Exhibit 17 is a sealed image contained on a disk in the ROT that is identified by a series of numerical identifiers. However, Prosecution Exhibit 1, the stipulation of fact, misidentifies the numerical sequence on the sealed disk by one digit.
- (4) Attachment 2 to Appellate Exhibit I (Government Motion to Preadmit Evidence) omits page number 16, but it appears the attachment is complete.

These errors were not raised by Appellant as prejudicial, and we find no prejudicial impact on Appellant's material rights.