

**IN THE U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS
WASHINGTON NAVY YARD
WASHINGTON, D.C.**

BEFORE

W.L. RITTER

C.L. SCOVEL

M.J. SUSZAN

UNITED STATES

v.

**Ricardo VILLAREAL
Lance Corporal (E-3), U.S. Marine Corps**

NMCCA 200400879

Decided 28 February 2005

Sentence adjudged 1 April 2003. Military Judge: P.J. Ware.
Review pursuant to Article 66(c), UCMJ, of Special Court-Martial
convened by Commanding Officer, 1st Supply Battalion, 1st FSSG,
Camp Pendleton, CA.

LtCol JOHN HOGAN, USMCR, Appellate Defense Counsel
Maj J.E. CHRISTIANSEN, USMC, Appellate Defense Counsel
Maj RAYMOND BEAL II, USMC, Appellate Government Counsel
LT CHRISTOPHER BURRIS, JAGC, USNR, Appellate Government Counsel

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.

SUSZAN, Judge:

A military judge, sitting as a special court-martial, convicted the appellant, pursuant to his pleas, of unauthorized absence, making a false official statement, and intentionally injuring himself, in violation of Articles 86, 107, and 115, Uniform Code of Military Justice, 10 U.S.C. §§ 886, 907, and 915. The appellant was sentenced to a bad-conduct discharge, 8 months confinement, and reduction to pay grade E-1. Pursuant to a pretrial agreement, the convening authority approved the sentence as adjudged, but suspended confinement in excess of 90 days.

We have carefully reviewed the record of trial, the appellant's assignment of error contending that there was unreasonable post-trial delay, and the Government's response. We conclude that the findings and sentence are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant was committed. Arts. 59(a) and 66(c), UCMJ.

Post-Trial Delay

The appellant contends that he was denied a speedy review of his conviction where it took 360 days from the date of trial to the date the staff judge advocate recommendation (SJAR) was prepared and an additional 51 days until the convening authority (CA) took action. The appellant was tried on 1 April 2003 and submitted a clemency request seeking deferral and waiver of automatic forfeitures on 15 April 2003. The SJAR was prepared on 25 March 2004 and the CA took action on 15 May 2004.

The appellant cites *United States v. Bell*, 60 M.J. 682, 686 (N.M.Ct.Crim.App. 2004) and asserts the CA's failing to make a timely decision on his clemency request prejudiced him. The appellant's reliance on *Bell* is misplaced. There is no legal requirement that the CA respond to a request for clemency, only that the CA consider such matters prior to taking his action. See RULE FOR COURTS-MARTIAL 1107, MANUAL FOR COURTS-MARTIAL, UNITED STATES (2002 ed.). The CA clearly stated he considered the clemency matters submitted by detailed defense counsel.

As stated by our superior Court in *United States v. Tardif*, 57 M.J. 219, 224 (C.A.A.F. 2002), this court "has authority under Article 66(c) to grant relief for excessive post-trial delay without a showing of 'actual prejudice' within the meaning of Article 59(a), if it deems relief appropriate under the circumstances." We are further "required to determine what findings and sentence 'should be approved,' based on all the facts and circumstances reflected in the record, including . . . post-trial delay." *Id.*

Under the facts of this case, we decline to grant relief based upon the length of time between the date of trial and the date the SJAR was completed, or upon the failure of the CA to respond to the clemency request prior to taking action on the case. We are convinced, given the nature of the appellant's offenses and the fact that the CA granted no clemency, that the appellant has not been prejudiced. We also note that once the appellant submitted his request for clemency, he did not complain of any harm resulting from the post-trial processing of his case. Failing to find prejudice, as we do here, we have considered all the facts and circumstances surrounding the post-trial delay in order to determine whether and how much of the findings and sentence should be approved and have found no other basis for affording relief. Art. 66(c), UCMJ; *Tardif*, 57 M.J. at 224.

Conclusion

Accordingly, the findings and sentence, as approved by the convening authority, are affirmed.

Senior Judge RITTER and Judge SCOVEL concur.

For the Court

R.H. TROIDL
Clerk of Court