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

**BEFORE**

**C.L. CARVER** **D.A. WAGNER** **E.B. STONE**

**UNITED STATES**

**v.**

**Derland G. MOON**
**Airman Apprentice (E-2), U.S. Navy**

NMCCA 200401278 Decided 8 November 2005

Sentence adjudged 2 April 2001. Military Judge: J.V. Garaffa. Review pursuant to Article 66(c), UCMJ, of Special Court-Martial convened by Commanding Officer, USS JOHN F. KENNEDY (CV 67).

Maj J.ED CHRISTIANSEN, USMC, Appellate Defense Counsel
CDR MICHAEL WENTWORTH, JAGC, USNR, Appellate Defense Counsel
Maj KEVIN C. HARRIS, USMC, Appellate Government Counsel
Maj ROBERT FUHRER, USMCR, Appellate Government Counsel



STONE, Judge:

The appellant was tried by a special court-martial before a military judge sitting alone. In accordance with his pleas, the appellant stands convicted of five specifications of unauthorized absence, three specifications of willful disobedience of a non-commissioned officer in performance of his duties, one specification of dereliction of duty, two specifications of disobedience of a lawful order, one specification of escape from custody, and one specification of wrongful use of marijuana on divers occasions in violation of Articles 86, 91, 92, 95, and 112a, Uniform Code of Military Justice, 10 U.S.C. §§ 886, 891, 895, and 912a. The military judge sentenced the appellant to a bad-conduct discharge, confinement for 90 days, and reduction to pay grade E-1. In accordance with the pretrial agreement, the convening authority suspended all confinement in excess of 75 days, and otherwise approved the sentence as adjudged.

The appellant assigns two errors. First, he alleges that he has been denied his right to speedy post-trial review. Second, he alleges that he was subjected to an unreasonable

multiplication of charges. We have considered the record of trial, the assignments of error, and the Government's response. We will grant relief for post-trial delay. The allegation of an unreasonable multiplication of charges is without merit. As modified, we conclude that the findings and sentence are correct in law and fact, and no error materially prejudicial to the substantial rights of the appellant remains. Article 59(a) and 66(c), UCMJ.

**Denial of Speedy Post-trial Review**

We agree with appellant that he was denied his right to speedy post-trial review. The one thousand two hundred and sixty-eight day delay from the date of the trial until the day this case was docketed at this court is both facially unreasonable and unexplained. However, because the record does not contain any request by the appellant for speedy review of his case, and because we find no prejudice to the appellant resulting from this delay, we will not grant relief under *United States v. Jones,* 61 M.J. 80, 83 (C.A.A.F. 2005). Rather, under the circumstances of this case, we will grant relief in our decretal paragraph pursuant to our authority under Article 66, Uniform Code of Military Justice, 10 U.S.C. §§ 866.

**Unreasonable Multiplication of Charges**

The appellant alleges that he was subject to an unreasonable multiplication of charges. We disagree. Specifically, the appellant alleges that his convictions for willful disobeying two petty officers, as set forth separately in Specifications 3 and 4 of Charge II, and his conviction for failing to report to work on the same day, as set forth in Specification 4 of Charge I, are an unreasonable multiplication of charges in that the appellant already had a preexisting duty to report to work and that the orders were issued merely to enforce that duty.

The record reveals that the appellant left his workspace aboard the ship and walked to “Legal” where he informed Chief Sasso that he “just didn't want to work anymore” and that he “wasn't going to work anymore.” In reply, Chief Sasso ordered the appellant to go back to work. Sometime after leaving Chief Sasso's office, the appellant ran into his master chief, Master Chief Rocker. Master Chief Rocker also told the appellant to return to his workplace. The appellant did not subsequently return to his workplace.

We consider five factors in determining allegations of unreasonable multiplication: (1) Did the appellant object at trial; (2) Is each specification aimed at distinctly separate criminal acts; (3) Does the number of specifications misrepresent or exaggerate the appellant's criminality; (4) Does the number of specifications unreasonably increase the appellant's punitive exposure; and (5) Is there any evidence of prosecutorial overreaching or abuse in the drafting of the charges? *United*

*States v. Quiroz,* 55 M.J. 334 (C.A.A.F. 2001), *on remand*, 57 M.J. 583 (N.M.Ct.Crim.App. 2002)(en banc), *aff'd,* 58 M.J. 183 (C.A.A.F. 2003)(summary disposition).

First, we find that the appellant did not raise this issue at trial. "[T]he failure to raise the issue at trial suggests that the appellant did not view the multiplication of charges as unreasonable . . . [and] [t]he lack of objection at trial will significantly weaken the appellant's argument on appeal." *United States v. Quiroz*, 53 M.J. 600, 607 (N.M.Ct.Crim.App. 2000)(en banc), *rev'd in part*, 55 M.J. 334 (C.A.A.F. 2001).

Second, while the charges are closely-linked, we find that they are aimed at distinct acts of criminal conduct. Regarding the two orders from the chief and the master chief to the appellant, the record reveals that the order issued by Master Chief Rocker, which was the second order issued, was the result of a chance encounter between the appellant and Master Chief Rocker *after* appellant had left LNC Sasso's office. ("[A]fter leaving from where LNC Sasso was, I ran into my master chief, Chief Rocker....“). Thus, although substantially identical in content, the orders were issued at separate times and places by persons not acting in concert. As such, the orders violations are separate from each other for purposes of this analysis. Regarding the appellant's leaving his place of duty without proper authority, that offense was entirely completed before the orders from Chief Sasso and Master Chief Rocker were issued. Thus, we conclude that because all three offenses occurred at different times and at different places they were necessarily aimed at three distinct acts of criminal misconduct.

Third, under the specific facts of this case, the challenged charges did not unreasonably increase the appellant's punitive exposure, particularly in view of the referral to a special court-martial and the lenient sentence adjudged.

Fourth, as for evidence of prosecutorial overreaching or abuse in the drafting of the charges, we find none. Again, the offense of leaving his place of duty was fully completed prior to his defiance of Chief Sasso's and Master Chief Rocker's orders, both of which were issued without knowledge of the other's order, and both of which were issued at a different time and a different location than the other.

Finally, after a careful review of the record of trial, we find there was no "piling on of charges . . . so extreme or unreasonable as to necessitate the invocation of our Article 66(c), UCMJ, . . . power." *Quiroz*, 53 M.J. at 606 (internal quotes omitted).

**Conclusion**

The findings are affirmed. However, we affirm only so much of the sentence as extends to confinement for 30 days, reduction

to pay grade E-1, and discharge from the service with a bad-conduct discharge.

For the Court

R.H. TROIDL
Clerk of Court

Senior Judge CARVER and Judge WAGNER concur.