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

BEFORE

C.A. PRICE **M.J. SUSZAN** **R.C. HARRIS**

UNITED STATES

v.

Joseph J. YOUNG
Corporal (E-4), U.S. Marine Corps

NMCCA 200101410 Decided 25 March 2004

Sentence adjudged 13 June 2000. Military Judge: S.G. Gatewood. Review pursuant to Article 66(c), UCMJ, of Special Court-Martial convened by Commanding Officer, 1st Light Armored Reconnaissance Battalion, 1st Marine Division (Rein), FMF, Camp Pendleton, CA.

LtCol WILLIAM F.L. RODGERS, USMCR, Appellate Defense Counsel
CAPT DIANE C. HOWARD, JAGC, USNR, Appellate Government Counsel

SUSZAN, Judge:

Consistent with his pleas, the appellant was convicted before a military judge sitting as a special court-martial of two specifications of wrongful use of methamphetamine, in violation of Article 112a, Uniform Code of Military Justice, 10 U.S.C. § 912a. He was awarded forfeitures of $670.00 pay per month for 1 month, reduction to pay grade E-1, confinement for 30 days, and a bad-conduct discharge. The convening authority approved the sentence as adjudged.

This is the second time this case has been before us for review. In an unpublished decision dated 13 March 2002, we affirmed the findings and sentence. *United States v.* Young, No. 200101410 (N.M.Ct.Crim.App. 13 Mar 2002)(unpublished decision)(Young I). Our superior court set aside our decision by Order dated 3 December 2002 and returned the record of trial for further consideration of the post-trial delay issue in light of *United States v. Tardif,* 57 M.J. 219 (C.A.A.F. 2002). *United States v. Young,* 58 M.J. 12 (C.A.A.F.2002)(summary disposition) (*Young* II*)*.

On remand, we have carefully considered the entire record of trial, the parties' pleadings on remand, and all other associated papers. We again 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.

Statement of Relevant Facts

The appellant was tried and sentenced on 13 June 2000. The resulting 35-page verbatim record of trial was authenticated on 3 November 2000, taking over 4 months. On 7 March 2001, the staff judge advocate prepared his recommendation (SJAR) and served it on the trial defense counsel. The convening authority took his action on 4 May 2001. It then took over 3 months before the record of trial was received at the Navy-Marine Corps Appellate Review Activity on 7 August 2001.

The periods of delay complained of by the appellant, between the end of trial on 13 June 2000 and completion and receipt of the SJAR on 7 March 2001 (267 days), and between the convening authority's action on 4 May 2001 and receipt of the record of trial by the Navy-Marine Corps Appellate Review Activity on 7 August 2001 (95 days), totaled 362 days.

In our original opinion, we found the appellant had shown no prejudice and denied relief. *Young* I, unpublished opinion at 2. The appellant now argues in his supplemental summary brief that "in light of current national circumstances, every appellant on voluntary or involuntary appellate leave who does not promptly receive his or her discharge is prejudiced in that he or she remains a member of the military theoretically subject to recall." Appellant’s Supplemental Summary Brief of 28 Apr 2003 at 2. We now address this argument and review our original decision in light of our superior court's opinion in *Tardif. Young* II, 58 M.J. at 12.

Post-Trial Delay

Our superior court has long held that an appellant is entitled to a speedy post-trial review of his court-martial. *United States v. Williams*, 55 M.J. 302, 305 (C.A.A.F. 2001); *United States v. Hudson*, 46 M.J. 226, 227 (C.A.A.F. 1997); *United States v. Tucker*, 9 C.M.A. 587, 589, 26 C.M.R. 367, 369 (1958) ("Unexplained delays . . . [in post-trial processes] should not be tolerated by the services, and they will not be countenanced by this Court.") For our part, we have consistently expressed "dismay over the continuing failure of the Government to act expeditiously in the appellate processing of courts-martial" and deplored that no one was "being held accountable" for these inordinate delays. *United States v. Williams*, 42 M.J. 791, 794 (N.M.Ct.Crim.App. 1995); *United States v. Henry*, 40 M.J. 722, 725 (N.M.Ct.Crim.App. 1995)(noting that this Court cannot condone "such dilatory and slipshod practices . . . ."); *United States v.*

Clark, 47 C.M.R. 39, 44 (N.C.M.R. 1973)(observing that "we have frequently voiced our concern over post-trial delay. We deplore it . . . .").

At the same time, the Court of Appeals for the Armed Forces had long observed that, to obtain relief, an appellant must establish some prejudice stemming from the delay. *Williams*, 55 M.J. at 305; *United States v. Banks*, 7 M.J. 92, 93-94 (C.M.A. 1979). However, our superior court most recently held that "a Court of Criminal Appeals has authority under Article 66(c), UCMJ, 10 U.S.C. § 866(c), to grant appropriate relief for unreasonable and unexplained post-trial delays" without a showing of "actual prejudice" within the meaning of Art. 59(a), UCMJ. *Tardif,* 57 M.J. at 220-21.

The appellant contends that the post-trial processing of his case, which took 267 days from trial to preparation of the SJAR, and another 95 days from action to receipt for review without explanation, was excessive and argues that his sentence should be reassessed and the bad-conduct discharge disapproved. We agree that, under the analysis of our superior court in *Tardif*, the post-trial delay was excessive. We are mindful of our authority under Article 66(c), UCMJ, however, not finding harm to the appellant resulting from the complained of delay, we conclude that it does not affect the findings and sentence [that] 'should be approved,' based on all the facts and circumstances reflected in the record. *Id.* at 224. We therefore decline to grant relief on this ground.

We find the appellant's claim of prejudice based on the theoretical conjecture that he may be subject to recall to be without merit. This argument is speculative at best and somewhat disingenuous in view of the relief requested. We also note that while the periods of delay in question are without explanation by the government, the appellant at no time sought an explanation or complained to appropriate authorities about post-trial delay.

Conclusion

Accordingly, we once again affirm the findings and sentence, as approved by the convening authority.

For the Court

R.H. TROIDL
Clerk of Court

Judge HARRIS did not participate in the decision of this case.