

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES**

UNITED STATES,)	REPLY BRIEF ON BEHALF OF
Appellee)	APPELLANT
)	
v.)	
)	Army App. Dkt. No. 20121100
)	
Private (E-1))	USCA Dkt. No. 17-0200/AR
CARLOS A. GONZALEZ-GOMEZ)	
United States Army,)	
Appellant)	

TO THE JUDGES OF THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES:

Issue Granted

**WHETHER DILATORY POST-TRIAL
PROCESSING VIOLATED APPELLANT'S DUE
PROCESS RIGHTS AND WARRANTS RELIEF
WHEN 782 DAYS ELAPSED BETWEEN
DOCKETING AT THE ARMY COURT AND
OPINION.**

Statement of the Case

On March 21, 2017, this Honorable Court granted appellant's petition for review. On April 6, 2017, appellant filed his final brief with this Court. The government responded on April 25, 2017. This is appellant's reply.

Argument

1. Reasons for Delay

The government claims the reasons for the appellate processing delay only weighs *slightly* in Private (PV1) Gonzalez-Gomez's favor while recognizing the Army Court of Criminal Appeals (Army Court) took "nearly one half of the total processing time in appellant's case." (Gov't Br. at 6-7). The government further argues that although the two issues raised by PV1 Gonzalez-Gomez, unreasonable multiplication of charges and post-trial delay, are "not particularly complex issues", the Army Court did not confine its review to those two issues. (Gov't Br. at 8). While true, this argument would have merit had the Army Court either specified an additional issue or discussed an additional issue in its opinion, but it did not. Further, the government's reliance on *Dearing* is misplaced. In *Dearing*, this Court recognized the Navy-Marine Corps Court of Criminal Appeals took a lengthy time to issue its opinion and recognized its judicial decision making process; nevertheless, this Court found a due process violation and granted appropriate relief. *United States v. Dearing*, 63 M.J. 478, 479 (C.A.A.F. 2006). The Navy-Marine Corps opinion in *Dearing* was twenty-nine pages and discussed multiple difficult issues, unlike the Army Court's eight page opinion discussing only unreasonable multiplication of charges and post-trial delay. *United States v. Dearing*, 60 M.J. 892 (N-MC Ct. Crim. App. 2005).

Additionally, the government argues since this was an “Opinion of the Court” it “would *naturally* go through a more rigorous and time consuming review process that [sic] a ‘Memorandum Opinion’ or ‘Summary Disposition.’”¹ (Gov’t Br. at 9)(emphasis added). This argument is speculative at best and should be afforded no weight. The government provides no support for this proposition and the Army Court has continually refused to disclose its internal rules and procedures, unlike federal district² and circuit courts,³ which could have supported a longer processing time here.

2. Prejudice

The government’s position that PV1 Gonzalez-Gomez’s argument is fatally flawed “because it is based on a fundamental misunderstanding of the relief” granted is misplaced. (Gov’t Br. at 11). Although correct that the relief granted was not credit against his sentence to confinement, it was towards his term of

¹ This argument is also contradicted by the Army Court’s most recent Opinion of the Court in *United States v. Heath*, __ M.J. __, 2017 CCA LEXIS 299 (Army Ct. Crim. App. April 28, 2017). In *Heath*, the Opinion of the Court was issued only ninety-three days after the government filed their brief. It should be noted that both the *Heath* and *Gonzalez-Gomez* opinions were authored by the same judge, thus demonstrating why no weight should be given to the government’s argument.

² See Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, dated December 19, 2016, <http://www.nysd.uscourts.gov/rules/rules.pdf> (last accessed May 2, 2017).

³ See Internal Operating Procedures of the United States Court of Appeals for the Third Circuit, dated January 13, 2017, <http://www2.ca3.uscourts.gov/legacyfiles/IOPs.pdf> (last accessed May 2, 2017).

confinement as adjudged. Had the Army Court acted sooner and within the time frame required by *Moreno*, PV1 Gonzalez-Gomez would have been able to benefit from the Army Court's reduction in his adjudged sentence to confinement. Had the confinement facility re-calculated his sentence to confinement based on the Army Court's approval of only sixty-six months confinement compared to seventy-two months, logically his minimum release date would have been sooner than originally calculated prior to the Army Court's grant of relief.

The government's statement that "any assertion that the appellant, who only served forty-eight of an approved sixty-six month sentence, spent more time in confinement that [sic] he would have if the Army Court acted soon is *purely speculative*" is disingenuous. (Gov't Br. at 13-14)(emphasis added). Contrary to the government's position, this Court can review this administrative matter and take judicial notice of AR 633-30. *See United States v. Paul*, 73 M.J. 274, 278 (C.A.A.F. 2014); (Gov't Br. at 13). It is evident that PV1 Gonzalez-Gomez was released early and his minimum release date was based on his adjudged sentence to confinement. *See Army Regulation (AR) 633-30*, paras. 13-14, Military Sentences to Confinement (Dec. 2, 2015)(describing how the rate of abatement for good conduct is calculated). Here, since the Army Court reduced his term of confinement, his rate of abatement would have been re-calculated: "If the term of confinement is reduced . . . the good conduct time will be recomputed at the rate of

abatement appropriate to the new term of confinement” AR 633-30, para. 13(f).

Central to the inquiry this Court must make, PV1 Gonzalez-Gomez would have been released earlier had the Army Court’s opinion been issued within the *Moreno* timeframe. No additional facts need to be determined by this Court. This Court need only look at when he was released, which was one day prior to the Army Court’s opinion granting relief. Even if PV1 Gonzalez-Gomez spent *only one additional day* in confinement because of the Army Court’s post-trial delay, he was prejudiced.

Conclusion

WHEREFORE, appellant respectfully requests this Honorable Court set aside and dismiss the charges and sentence in his case.



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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing in the case of *United States v. Gonzalez-Gomez*, Army Dkt. No. 20121100, USCA Dkt. No. 17-0200/AR, was electronically filed brief with the Court and Government Appellate Division on May 4, 2017.

A handwritten signature in black ink, appearing to read 'Michelle L. Washington', is positioned above the printed name.

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