

UNITED STATES COURT OF MILITARY APPEALS

United States v. Jackson

22 C.M.A. 481 (1973) · Decided October 19, 1973

SUMMARY

The United States Court of Military Appeals held that the Government failed to explain the delay between the accused’s confinement and trial, violating his right to a speedy trial. The court set aside the findings and sentence, reversed the Court of Military Review, and ordered the charges dismissed.

CASE DETAILS

COURT	United States Court of Military Appeals
WRITING FOR THE COURT	Per Curiam
JURISDICTION	USA
DECIDED	October 19, 1973
DISPOSITION	reversed
PROCEDURAL POSTURE	Jackson was convicted of unlawfully receiving stolen money orders and sentenced by court-martial. The Court of Military Review affirmed, and the United States Court of Military Appeals reviewed the claim that the accused was denied a speedy trial.
STANDARD OF REVIEW	The court independently examined the stipulated chronology and trial testimony concerning the speedy-trial claim, placing on the Government the burden of explaining delay exceeding 90 days.
PRECEDENTIAL VALUE	Published opinion of the United States Court of Military Appeals applying a binding speedy-trial framework.
PARTIES	Jackson v. United States

TOPICS

- speedy trial
- military law
- criminal procedure
- right to counsel

PRACTICE AREAS

- military law
- criminal procedure
- speedy trial

QUESTIONS PRESENTED

1. Whether the 125-day period of confinement before trial violated the accused's right to a speedy trial under the court's 90-day framework.
2. Whether the Government adequately explained the delay beyond 90 days.

HOLDINGS

1. The Government failed to meet its burden of explaining the delay beyond the 90-day period specified in *United States v. Burton*.

KEY QUOTATIONS

“In our opinion, these data are insufficient to sustain the heavy burden the Government must bear in explaining delay beyond the period of 90 days which we specified in United States v Burton, 21 USCMA 112, 44 CMR 166 (1971).” (22 C.M.A. at 482)

“The findings of guilty and sentence are set aside and the decision of the Court of Military Review is reversed. The record of trial is returned to the Judge Advocate General of the Navy. The charges are ordered dismissed.” (22 C.M.A. at 482)

FACTUAL BACKGROUND

Jackson was confined for 125 of the 126 days between May 19 and September 22, 1972. Although he requested assistance in obtaining counsel on May 30, counsel was not assigned until August 21, despite repeated interim official requests. The Article 32 investigation was not appointed until August 21, and the resulting processing required Jackson to waive the five-day waiting period under Article 35 to avoid further delay. The charged offense involved approximately \$200 in stolen money orders, and Jackson had confessed to the offense on May 19.

PROCEDURAL HISTORY

Jackson was confined beginning May 19, 1972, and was tried on September 22, 1972. The Court of Military Review affirmed his conviction while acknowledging that the processing was not expeditious. The Court of Military Appeals reversed, set aside the findings and sentence, and ordered the charges dismissed.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The findings of guilty and sentence were set aside, the decision of the Court of Military Review was reversed, the record of trial was returned to the Judge Advocate General of the Navy, and the charges were ordered dismissed.

CASES CITED

- *United States v. Burton*, 21 C.M.A. 112, 44 C.M.R. 166 (1971)

- United States v. Marshall, 22 C.M.A. 431, 47 C.M.R. 409 (1973)
- United States v. Smith, 22 C.M.A. —, 47 C.M.R. — (Sept. 21, 1973)
- United States v. Stevenson, 22 C.M.A. —, 47 C.M.R. — (Aug. 24, 1973)

OPINION

PER CURIAM.

OPINION OF THE COURT Per Curiam: One hundred and twenty-six days elapsed between the accused's confinement on May 19, 1972, and his trial on September 22, 1972. With the exception of 1 day,¹ the accused was confined for the entire period — 125 days.

The evidence reflects that on May 30 he executed a formal written request to see his counselor, Staff Sergeant Best, "to see... about getting me a lawyer," but one was not assigned to him until August 21, 1972, 83 days later, despite repeated interim official requests for assistance.

On the day, August 24, counsel was informed he was to defend the appellant, he also received TAD (temporary additional duty) orders² from the Commanding General, Camp Lejeune, North Carolina, to proceed to Marine Corps Air Station, El Toro, California, "for a period of about nine days in connection with participating in the All Marine Golf Championship." A stipulated chronology was entered at trial during the hearing on defense counsel's motion to dismiss for lack of speedy trial.

While the Court of Military Review affirmed the appellant's conviction, it, nevertheless, declared that: In our view, this record is not a model of expeditious processing in bringing this appellant to trial. We agree.

The single offense for which the appellant was convicted, unlawfully receiving stolen money orders of a value of about \$200.00, allegedly occurred on or about April 14, 1972. The accused made a full and complete confession to the mail offense to agents of the Naval Investigative Service on May 19, 1972.

The Article 32 investigating officer was not appointed, however, until August 21, the same day defense counsel was assigned. The hearing was held September 7; the report, consisting of less than five typewritten pages and three pertinent attachments, was prepared September 13; and charges were served on the appellant September 19. Trial was held on September 22.

Such alacrity, while commendable, required the accused to waive the 5-day waiting period provided by Article 35, Uniform Code of Military Justice, 10 USC § 835, in order to avoid additional delay. We have carefully examined the stipulated chronology and the testimony at trial relative to the appellant's claim that he was denied his right to a speedy trial.

In our opinion, these data are insufficient to sustain the heavy burden the Government must bear in explaining delay beyond the period of 90 days which we specified in *United States v Burton*, 21

USCMA 112, 44 CMR 166 (1971). See also *United States v Marshall* 22 USCMA 431, 47 CMR 409 (1973); *United States v Smith*, 22 USCMA —, 47 CMR — (September 21, 1973); *United States v Stevenson*, 22 USCMA —, 47 CMR — (August 24, 1973).

The findings of guilty and sentence are set aside and the decision of the Court of Military Review is reversed. The record of trial is returned to the Judge Advocate General of the Navy. The charges are ordered dismissed. Jackson was released on June 20, but was reconfined the following day for allegedly committing the offense of resisting apprehension. He was found not guilty of this charge at trial.

The TAD was to commence on or about August 26, 1972. Defense counsel returned to Camp Lejeune on September 2, 1972.