

IN THE UNITED STATES COAST GUARD
COURT OF CRIMINAL APPEALS

UNITED STATES,
Appellee

v.

Peter J. HERNANDEZ
Electrician's Mate Second Class
U.S. Coast Guard,
Appellant

4 March 2019

APPELLANT'S MOTION FOR
RECONSIDERATION, FILED 30
NOVEMBER 2018

CGCMSP 24956

DOCKET NO. 1452

ORDER

Appellant moves this Court to reconsider our decision of 31 October 2018. After considering additional evidence on the financial implications of Appellant's reassessed sentence, we decline.

Appellant and the United States (the latter responding to our follow-on queries) each offered evidence seeking to quantify the "financial implications of our reassessment" alluded to in our opinion. *United States v. Hernandez*, 78 M.J. 643, 648 (C.G.C.C.A. 2018). The evidence does serve to clarify what we might have expected to be a more substantial financial impact following restoration of all rights, privileges, and property pursuant to R.C.M 1208. It is surprising to us that an active duty servicemember who forfeits pay because he is serving adjudged confinement, in accordance with Article 58b, UCMJ, is not entitled to back pay if an appellate court later deems a portion of that confinement a legal nullity. But we are neither the experts nor the arbiters of such pay issues. *See United States v. Allen*, 33 M.J. 209, 215–16 (C.M.A. 1991). We consider only the impact, if any, such pay issues have on military justice issues before us—here, the sentence we believe should be approved based on our conclusion there was legal error.

The precise amount of back pay Appellant may be entitled to is, in the end, of limited import to us. Mitigating the reduction in pay grade from E-1 to E-2 gives Appellant a concrete benefit beyond reducing the number of his convictions from three to one. Having given due consideration to the particular circumstances of the case, the nature of the offense, and all matters in the record of trial, we continue to conclude that a sentence of confinement for six months, reduction to pay grade E-2, and a bad-conduct discharge is a legally appropriate reassessed sentence and "should be approved." Article 66(c), UCMJ; *United States v. Winckelmann*, 73 M.J. 11, 15 (C.A.A.F. 2013).

Accordingly, it is, by the Court, this 4th day of March, 2019,

ORDERED:

That Appellant's motion for reconsideration is denied.



For the Court,

Sarah P. Valdes
Clerk of the Court

Copy: Office of Military Justice
Appellate Government Counsel
Appellate Defense Counsel