

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee

**MOTION TO RECONSIDER AND
MOTION FOR LEAVE TO FILE
BRIEF EXCEEDING 50 PAGES**

v.

Docket No. ARMY 20200715

Private First Class (E-3)
JEROME J. FORREST,
United States Army,

Appellant

Tried at Fort Campbell, Kentucky, on
8 May 2019, 6 August 2019, 29
August 2019, 25 October 2019, 2
December 2019, 19 February 2020, 7
December 2020, 9-11 December 2020,
and 14-16 December 2020 before a
general court-martial convened by the
Commander, Headquarters, Fort
Campbell, Colonel Matthew A.
Calarco and Colonel Jacqueline
Tubbs, military judges, presiding.

**TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES ARMY COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 17.3(b) of this Court's Rules of Appellate Procedure,
appellant hereby moves for leave to file appellant's Brief in excess of the page
limitations set forth in the Rule. Appellant respectfully submits that there is good
cause to grant this motion. In support of this motion appellate defense counsel
offers the following:

1. On 16 December 2020, a military judge sitting as a general court-martial
convicted appellant, contrary to his plea, of one specification of violating
Article 118, intentional murder. 10 U.S.C. § 918 (2018). The military

judge sentenced appellant to a dishonorable discharge and confinement for life with eligibility for parole. The appellant's record of trial consisted of 1,273 pages of transcript and an additional 1,509 pages of exhibits and allied documents. Although the record of trial, as a whole, was lengthy, the defense's pre-sentencing case consisted of less than thirty pages. (R. at 1229-1257). As a result, appellate defense counsel conducted extensive factual investigation which required lengthy discussion within appellant's brief.

2. In addition, appellant is asserting five assignments of error, many of which contain multiple subsections, and some of which requiring extensive discussion of fact and explanation and analysis of law.
 - a. Assignment of Error I discusses the ineffective nature of defense counsel's preparation for trial. This assignment of error is thirty-three pages in the brief. Six of those pages are for the facts relevant, ten pages are for the law, and the remaining sixteen pages cover the Argument section. The Argument section is so length because it details the eleven declarations that appellate defense counsel gathered to support the assignment of error. Unfortunately, brevity was unable to be obtained because of the

number of declarations and the extreme nature of trial defense counsel's ineffectiveness.

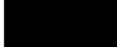
- b. Assignment of Error II discusses whether the military judge erred by denying the defense's motion to compel a mitigation expert. This assignment of error is four pages in total. This is an indicator that appellate defense counsel attempted to be brief and concise in argument.
- c. Assignment of Error III questions whether the military judge erred by admitting prosecution exhibit 32 over defense objection. This assignment of error takes up seven pages in the brief. Again, this is an indicator that appellate defense counsel attempted to be brief and concise.
- d. Assignment of Error IV discusses whether the sentence was inappropriately severe. This assignment of error is three pages long. Yet another example of appellate counsel's attempt to be concise and conscientious of the Court's time.
- e. Assignment of Error V discusses whether the military judge properly advised appellant of his forum rights. This assignment of error takes up seven pages of the brief. Four of those pages cover the law, which was important to cover in detail given that the

military judge's actions in this case were a result of the MJA16 changes to the code, which is an area of law that is still be developed.

Given the severity of appellant's sentence, and the extensive errors assigned by counsel, the standard page limit is insufficient to fully brief the necessary legal issues. Assignment of Error I, which is the bulk of the brief, is incredibly fact intensive and the size is a result of the number of declarations obtained by defense counsel as well as the numerous substantial errors made by trial defense counsel. Appellant therefore asks this court reconsider its initial ruling and permit appellant to file his brief as originally submitted, 63 pages in total length. A requirement to cut the page number in the brief would result in critical information that is necessary for this court to make an informed ruling having to be omitted.

Panel No. 4

MOTION TO RECONSIDER MOTION
FOR LEAVE TO FILE BRIEF
IN EXCESS OF PAGE LIMITATIONS:

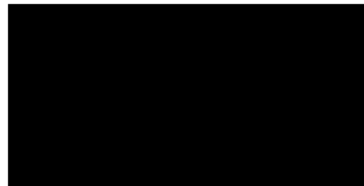
GRANTED: _____

DENIED: _____

DATED: 21 JAN 2022



NANDOR F.R. KISS
CPT, JA
Appellate Defense Counsel
Defense Appellate Division



LAUREN M. TEEL
CPT, JA
Branch Chief
Defense Appellate Division

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was electronically submitted to Army Court and Government Appellate Division on January 20, 2022.



Paralegal Specialist
Defense Appellate Division

