

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES,
Appellee

**MOTION FOR RECONSIDERATION
OF EXTENSION (1) AFTER
REMAND**

v.

Docket No. ARMY 20210286

Private First Class (E-3)
LUIS A. MORALESSANCHEZ
United States Army,
Appellant

Tried at Fort Bliss, Texas, on 5 June, 3
August, 22 September 2020, 14, 25–26
January, 19 February, and 3–8, 10, 17
May 2021, before a general court-martial
appointed by Commander, Fort Bliss,
Colonel Michael S. Devine and Colonel
Robert L. Shuck, military judges,
presiding.

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

COME NOW the undersigned appellate defense counsel, pursuant to Rules
23, 24, and 31 of this court’s Rules of Appellate Procedure, and move this court to
reconsider its decision to not accept appellant’s Motion for Extension (1) after
Remand. Appellant requests this court grant a 30-day extension of time until 27
February 2023 to file a Brief on Behalf of Appellant.

1. Consistent with Army Regulation 27-26, Rules of Professional Conduct for Lawyers, the undersigned counsel request additional time to ensure that counsel have diligently investigated, thoroughly researched, and appropriately briefed the assignments of error in this case in order to fulfill counsel’s ethical obligation to represent the appellant’s interest.
2. This is a contested case involving a mixed plea with twenty-five specifications, to include two contested convictions for Article 118 offenses. The record of trial with exhibits and attachments is approximately 4,000 pages, which includes 1461 pages of trial transcript. The sentence adjudged

on 10 May 2021 included confinement for a total term of forty years and ten months and a dishonorable discharge. Appellant is still in confinement. Appellant concurs with this request.

3. On 19 September 2022, this court granted appellant's Motion for Extension (5) with reconsideration of finality, setting 28 October 2022 as the deadline to file appellant's brief. On 28 October 2022, this Court remanded appellant's case to the military judge to produce a substantially verbatim recording of the court-martial proceeding, complete a new certification of the record of trial, and return the case within fourteen days. The military judge and court reporter completed the new certification on 1 November 2022. On 29 November 2022, this court granted the government's motion out of time to attach audio recordings of the court-proceedings and a new certification. In accordance with this court's remand order, appellant's brief is currently due on 28 January 2023.

4. On 19 January 2023, appellant filed a Motion for Extension (1) after Remand. On 20 January 2023, this court did not accept and rejected this filing for the following reason: "Incorrect Extension. This case is not a remand, it should reflect Mot for Ext (7). Please correct and refile." Appellant requests this court reconsider its decision to not accept the Motion for Extension (1) after Remand, because appellant's case was remanded pursuant to this court's order: "Pursuant to R.C.M. 1112(d)(2), we *remand* this case to the military judge to produce a substantial verbatim recording. . . . A new certification pursuant to R.C.M. 1112(c) will then be completed and *returned to this court*. . ." (Order, 28 October 2022) (emphasis added); *see also* Joint Rules of Appellate Procedure, Rule 29(b)(1) ("When a Court *remands* but does not dismiss the appellate proceeding, such as for fact-finding or issuance of a certificate of correction, the *remand* does not return jurisdiction over the case to the court-martial and military judge") (emphasis added).

5. Appellant requests this court grant a 30-day extension of time after remand to 27 February 2023. As good cause for granting the extension, appellant submits:

a. Civilian counsel currently has 47 cases on his docket. Civilian counsel filed a brief with this court in *United States v. Marin*, Docket No. 20210375 on 17 January 2023, and has a brief due on 24 January 2023 in *United States v. Armstrong*, Docket No. 20210644. Civilian

counsel also has the following pending cases: five before the CAAF; 19 before this court; three before the Navy-Marine Corps Court of Criminal Appeals; three before the Air Force Court of Criminal Appeals; and six before the Court of Federal Claims. Additionally, civilian counsel currently has three pending writs of habeas corpus and eight cases before clemency and parole boards.

b. Second undersigned counsel is currently assigned 29 cases (22 contested) with approximately 15,500 transcript pages pending before this court and the CAAF. In the next thirty days, second undersigned counsel has one other initial brief and an answer brief in an Article 62 appeal due to this court, and a brief and three supplements with assignments of error due to the CAAF. First undersigned counsel was overseas on scheduled annual leave from 8 to 29 December 2022.

c. Since appellant is still confined, undersigned counsel require additional time due to delays in transmitting documents and coordinating teleconferences with appellant. Specifically, the U.S. Disciplinary Barracks cancelled the most recent teleconference on 17 January 2023 because appellant was diagnosed with COVID.

6. The undersigned counsel believe that the requested extension is in the best interest of the appellant and that denying this request will materially prejudice appellant's appellate rights.

WHEREFORE, appellate defense counsel respectfully request that this court grant the instant motion.

PANEL NO. 3

MOTION FOR
RECONSIDERATION

GRANTED: [REDACTED] 20 January 2023

DENIED: _____

DATE: _____

[REDACTED]
FOR: WILLIAM E. CASSARA, Esq.
Civilian Appellate Defense Counsel

MOTION FOR EXTENSION (1)
AFTER REMAND

GRANTED: [REDACTED] 20 January 2023

DENIED: _____

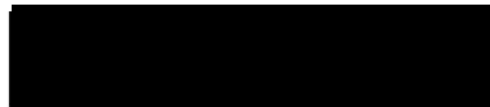
DATE: _____

FINAL

[REDACTED]
ANDREW R. BRITT
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was electronically submitted to the
Army Court and Government Appellate Division on 20 January 2023.



ANDREW R. BRITT
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division