

*United States Court of Appeals for the Armed Forces
Washington, D.C. 20442-0001*

UNITED STATES,)	USCA Dkt. No. 98-0064/AF
)	Crim. App. No. 32456
)	
)	
v.)	<u>O R D E R</u>
)	
)	
Scott E.)	
FALK (390-84-7252))	
)	
Appellant)	

The United States, appellee, petitioned this Court for reconsideration, citing various precedents relating to the construction of 18 USC § 2252(a). It also appears that the issue of the proper construction of 18 USC § 2252(a) has been raised in other cases presently pending in this Court and can be considered in the disposition of those cases. United States v. Augustine, No. 98-5026, and United States v. Sapp, No. 99-0260.

However, the United States did not cite any new authorities which might warrant reconsideration of this Court's earlier decision that appellant's pleas of guilty were improvident and that the findings and sentence based thereon should be set aside. 50 MJ 385, 390 (1999).

Accordingly, it is, by the Court, this 30TH day of September 1999

ORDERED:

That the Petition for Reconsideration as it relates to the construction of 18 USC § 2252(a) is granted and the opinion of the Court is withdrawn insofar as it relates thereto. Reconsideration of the Court's prior decision setting aside the findings and sentence is denied. The Court reserves the issue concerning the proper construction of 18 USC § 2252(a) for further consideration if raised in some other case, or if raised again in this case after further proceedings in the courts below.

AND

That the second sentence of the first paragraph of Part IV is amended to read as follows:

The finding of guilty of specification 1 of Charge I and the sentence are set aside. AND

That the last sentence of the first paragraph of Part IV is amended to read as follows:

A rehearing on specification 1 of Charge I and the sentence may be ordered.

For the Court,

/s/ Thomas F. Granahan
Clerk of the Court

SULLIVAN, Judge (dissenting):

I would order re-argument of this case. Important decisions from other federal circuit Courts of Appeals were overlooked at our prior oral argument of this case. United

States v. Hall, 142 F.3d 988, 998 (7th Cir. 1998); United States v. Vig, 167 F.3d 443, 448 (8th Cir. 1999); United States v. Michalec, 1999 U.S. App. Lexis 141 (4th 1999) (see 50 MJ 409).

cc: The Judge Advocate General of the Air Force
Appellate Defense Counsel (KOHRT)
Appellate Government Counsel (HINDEL)