

I. A Sentence of Incarceration or Placement in an RRC Will Likely Not Affect Micajah's VA benefits

According to the Congressional Research Service (“CRS”), the VA could reduce or suspend an individual’s monthly disability payments if that veteran serves more than 60 days’ incarceration, however it appears as though that only applies to individuals convicted of a felony.² See Exhibit 1, Veteran Involvement in the U.S. Capitol Breach: Possible Effects on VA Benefits, CRS, February 16, 2021; See also 38 U.S.C. §5313(a)(1).³ The Department of Veteran’s Affairs also confirms this on their website when discussing how incarceration affects eligibility for VA Benefits.⁴ Undersigned counsel also called the Veteran’s Disability Benefits Hotline who confirmed the same to be true.

Lastly, according to the Department of Veteran’s Affairs, Micajah’s benefits should also not be affected if he resides in an RRC.⁵ The information provided does not specify any time limitations or indicate removal of benefits after a certain period of time in an RRC.

The government, in its supplement, incorrectly suggests that the Court also has authority to impose a sentence that would include placement in an RRC after a

issue. If the Court would like more briefing on its authority to impose a split sentence, undersigned counsel requests that the Court allow more time to further brief the Court.

² Mr. Jackson’s original belief that he could lose his benefits if sentenced to more than 30 days’ incarceration was based on conversations with his fellow veterans in his local agency. However, upon further research, it does not appear that his VA disability benefits will be affected because he has not been convicted of a felony offense.

³ Mr. Jackson is not receiving a military pension and so 38 U.S.C. §1505(a) does not apply to his case.

⁴ [Incarcerated Veterans - Veterans \(va.gov\)](https://www.va.gov/ncac/ncac.htm)

⁵ *Id.*

term of incarceration and not “in lieu of” incarceration. *See* ECF No. 33 at 4.

However, that is incorrect as community confinement may only be imposed as a condition of probation. *See* 18 U.S.C. §3563(b)(11).

II. The *Little* Decision Does Not Authorize The Court To Impose a Split Sentence

The government’s notice of supplemental authority provides a recent district court opinion in *United States v. Little*, 21-CR-315 (RCL), where the court imposed a split sentence and provided a memorandum opinion outlining its reasons for doing so. *See Little*, ECF No. 43. For starters, that decision will be appealed by the defendant as he has noticed his intent to appeal on March 21, 2022. *See Little*, ECF No. 50.⁶ Undersigned counsel previously provided the Court with an amicus brief filed in *United States v. Jeremiah Caplinger*, 21-CR-342 (PLF), which thoroughly explains why the Court does not have authority to impose such a sentence. The decision in *Caplinger* is still pending.

The Court in *Little* did not address some of the main arguments raised in *Caplinger*, specifically that the plain text of §§3551(b) and 3561(a)(3), *interpreted harmoniously*, precludes a split sentence for any single offense. *See Caplinger* Amicus Brief at 5. For all of the reasons already stated in *Caplinger*, the decision in *Little* is incorrect and a split sentence is impermissible.

⁶ The government also provides *United States v. Jerry Smith*, 21-CR-290 (RBW), as support for another district court that recently imposed a split sentence for a petty offense. As of this date, there is no memorandum opinion that has been issued addressing the reasons for its decision.

