



ORDERED in the Southern District of Florida on November 17, 2014.

**Robert A. Mark, Judge
United States Bankruptcy Court**

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA**

_____)	
In re:)	CASE NO. 11-16677-RAM
)	CHAPTER 13
NELSON GONZALEZ,)	
)	
)	
Debtor.)	
)	
_____)	

ORDER DENYING MOTION FOR RECONSIDERATION

The Chapter 13 Trustee has filed a Motion to Reconsider Motion to Pay Off (the "Motion to Reconsider") [DE# 151]. The Motion to Reconsider asks the Court to reconsider its October 15, 2014 Order Granting Debtor's Motion to Payoff Chapter 13 Bankruptcy Early (the "Early Payoff Order") [DE# 148].

The Motion to Reconsider argues that an above-median debtor like Mr. Gonzalez may not modify a plan to provide for payoff under a plan with a term shorter than the applicable commitment period. This issue has generated conflicting decisions both in this district and around the country. Compare *In re Rhymaun*, Case No. 10-20092-LMI (Bankr. S.D. Fla. August 8, 2011) (Judge Isicoff decision sustaining the chapter 13 Trustee's objection to an early payoff modification) with *In re Tibbs*, 478 B.R. 458 (Bankr. S.D. Fla. 2012) (Judge Kimball decision approving a modified plan that provided for an early payoff).

The conflicting rulings arise from different interpretations of 11 U.S.C. § 1329(b). Courts denying early payoff plan modifications for above-median debtors conclude that modified plans under § 1329 are subject to the "applicable commitment period" requirements in § 1325(b)(4). Courts allowing early payoff plan modifications conclude that § 1329(b) does not incorporate § 1325(b)(4).

In *Tibbs*, Judge Kimball provides a well-reasoned statutory analysis in support of his conclusion that plans modified under § 1329(b) are not subject to the applicable commitment requirements in § 1325(b)(4). The Court agrees with and adopts Judge Kimball's analysis and conclusion. Therefore, it is -

ORDERED that the Motion to Reconsider is denied.

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COPIES TO:

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