

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

December 11, 2018

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LUIS ENRIQUE RODRIGUEZ-
ARROYO,

Defendant - Appellant.

No. 18-6028
(D.C. Nos. 5:17-CV-00072-R and
5:15-CR-00078-R-1)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **MATHESON, MURPHY, and CARSON**, Circuit Judges.

On November 26, 2018, this court granted a certificate of appealability on Appellant's claim that his trial counsel was ineffective for failing to object to the enhancement of his sentence based on his prior Oklahoma second-degree burglary convictions. The court ordered the United States to file a response brief by December 26, 2018. In response, on December 7, 2018, the government filed an unopposed

* In light of this decision, the oral argument scheduled for January 24, 2019 in Denver, Colorado is vacated, and all counsel scheduled to appear are excused from attending. This matter is submitted on the briefs. Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Motion to Remand to the district court for additional proceedings as to whether Oklahoma second-degree burglary is a crime of a violence.

Upon consideration, the *Motion* is granted. This appeal is dismissed, and this matter is remanded with instructions to the district court to vacate its judgment dated December 19, 2017 and conduct additional proceedings consistent with the government's *Motion for Remand* filed on December 7, 2018 as well as any other proceedings the district court deems appropriate in its discretion.

The Clerk is directed to issue the mandate forthwith.

Entered for the Court
Per Curiam