

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

April 23, 2019

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MICHAEL PATRICK MCELHINEY,

Defendant - Appellant.

No. 18-3140
(D.C. Nos. 5:16-CV-04120-DDC &
5:98-CR-40083-DDC-1)
(D. Kan.)

ORDER AND JUDGMENT*

Before **MATHESON, BACHARACH, and PHILLIPS**, Circuit Judges.

This matter is before us on the “Motion of the United States for Summary Affirmance” (“Motion”). The United States moves for summary affirmance of the district court’s judgment based on this court’s recent published decision in United States v. Pullen, 913 F.3d 1270 (10th Cir. 2019), *en banc rev. denied* April 15, 2019. Defendant-Appellant does not dispute that United States v. Greer, 881 F.3d 1241 (10th Cir. 2018) and Pullen control the outcome of this appeal; Mr. McElhiney does not contest summary

* After examining the appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

affirmance of the district court's judgment, but he reserves the right to appeal this matter to the United States Supreme Court for further review.

In light of the foregoing, the abatement of this matter is LIFTED, and the Motion is GRANTED. In light of this court's decision in Pullen, the judgment of the district court is AFFIRMED.

Entered for the Court
Per Curiam