

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

April 30, 2019

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LEO D. GRAHAM, JR.,

Defendant - Appellant.

No. 18-3137
(D.C. Nos. 6:16-CV-01174-JTM and
6:99-CR-10023-JTM-2)
(D. Kan.)

ORDER AND JUDGMENT*

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

This matter is before the court on the *Motion of the United States for Summary Affirmance* and appellant Leo D. Graham, Jr.’s response. 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. Mr. Graham does not dispute that *United States v. Greer*, 881 F.3d 1241 (10th Cir. 2018) and *Pullen* control the outcome of this appeal and does not

* 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel.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. 32.1.

contest summary affirmance of the district court's judgment, but reserves the right to petition the United States Supreme Court for certiorari review.

In light of the foregoing and of this court's decision in *Pullen*, the court grants the government's motion and summarily affirms the judgment of the district court.

Entered for the Court
Per Curiam