

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

August 1, 2019

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARTIN MARTINEZ,

Defendant - Appellant.

No. 19-2027
(D.C. No. 1:17-CR-03060-MV-1)
(D. N.M.)

ORDER AND JUDGMENT*

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

On December 11, 2018 defendant Martin Martinez was sentenced to 50 months' imprisonment following his conviction on a single count of possession with intent to distribute 50 grams and more of methamphetamine in violation of 21 U.S.C. §§841(a)(1) and (b)(1)(A). Judgment entered on January 31, 2019, and this appeal followed.

On July 31, 2019, the government filed an *Unopposed Motion for Remand to the District Court for Resentencing*. The *Motion* states that upon review of the record

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel.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

the parties have conferred and agree there was a procedural error in the calculation of the final sentencing guidelines range. Specifically, while the district court ruled Mr. Martinez was entitled to a minor role adjustment, the resulting four-level offense level reduction was not included in the calculation. Noting the consent of Mr. Martinez, the *Motion* now asks this court to remand to the district court for resentencing and to allow a proper calculation of the sentencing guidelines range. We grant the *Motion* as directed in this Order & Judgment.

This case is REMANDED with instructions for the district court to VACATE Mr. Martinez' sentence and to resentence him allowing for application of the proper sentencing guidelines range.

The Clerk is directed to issue the mandate forthwith.

Entered for the Court

Per Curiam