

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

December 20, 2019

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CRISTYNE DENISE GILLELAND,

Defendant - Appellant.

No. 19-5025
(D.C. No. 4:18-CR-00173-JED-1)
(N.D. Okla.)

ORDER AND JUDGMENT*

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

Appellant Cristyne Denise Gilleland appeals following her convictions for wire fraud and filing a false tax return. On October 28, 2019, she filed her opening brief in this court and that brief asserted three claims. First, she argued plain-error relief is required because the restitution amount assessed as a condition of her supervised release is in excess of the loss caused by the offense, and as a result cannot stand. Second, she urged the district court plainly erred by delegating to the Internal Revenue Service the judicial

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

** Because this matter is being decided on a *Joint Motion to Remand for Resentencing* this panel has determined unanimously that oral argument would not materially assist in the determination of the appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

function of setting a restitution payment schedule. Finally, she asserted that upon any remand it would be appropriate to clarify the final order of forfeiture issued on February 11, 2019, to reflect the parties' agreement on the forfeiture amount.

On December 19, 2019, and while the deadline was pending for filing a response brief, the parties filed a *Joint Motion to Remand for Resentencing*. The *Joint Motion* asserts relief is appropriate on each of the issues raised in the opening brief, and requests that this court vacate the underlying judgment and remand for resentencing. Upon consideration and review of the record we grant the *Motion* as directed in this Order and Judgment.

Specifically, we remand with instructions for the United States District Court for the Northern District of Oklahoma to vacate both the judgment issued on February 27, 2019 and the Amended Judgment issued on April 25, 2019, and to undertake, in its discretion, all necessary and appropriate proceedings required to resentence Ms. Gilleland and clarify the forfeiture order in accord with the *Joint Motion* filed here.

The Clerk is directed to issue the mandate forthwith.

Entered for the Court

Per Curiam