

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

December 27, 2019

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FREDERICK E. PENDLETON,

Defendant - Appellant.

No. 19-3207
(D.C. No. 2:15-CR-20017-JAR-1)
(D. Kan.)

ORDER AND JUDGMENT*

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

Appellant Frederick E. Pendleton appeals the August 21, 2019 judgment following revocation of supervised release. On October 18, 2019, the government filed a *Motion for Enforcement of Appeal Waiver*. While the motion for enforcement was pending, the parties filed on December 23, 2019, a *Joint Motion for Limited Remand to Strike Risk-Notification Condition of Supervised Release*. The motion for remand sought to remand this case with instructions to the district court to correct the judgment to omit the risk-notification condition of supervised released that the parties agree was erroneously

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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 on decided on a joint motion for remand to the district court, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument.

imposed in the August 21 judgment, *see United States v. Cabral*, 926 F.3d 687, 699 (10th Cir. 2019) (finding risk-notification condition of supervised release is an improper delegation of judicial power). Then on December 26, 2019, the government filed an unopposed *Motion for Leave to Withdraw Motion for Enforcement of Appeal Waiver*, seeking to proceed only on the joint motion for remand.

Upon consideration, we construe the parties' joint motion for a limited remand as a joint motion for full remand and we grant the motion to remand this case to the district court for entry of a new judgment that omits the risk-notification condition of supervised release. We also grant the government leave to withdraw its motion for enforcement of appeal waiver. The Clerk is directed to note that withdrawal on the docket.

Specifically, we remand with instructions for the United States District Court for the District of Kansas to vacate the judgment entered on August 21, 2019, and to undertake all necessary and appropriate proceedings required to enter a new judgment that omits Standard Condition of Supervision No. 12, the risk-notification condition, in accord with the parties' joint motion for remand.

The Clerk is directed to issue the mandate forthwith.

Entered for the Court

Per Curiam