

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

September 23, 2020

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JASON P. BRISCOE,

Defendant - Appellant.

No. 19-3261
(D.C. No. 6:18-CR-10031-EFM-1)
(D. Kan.)

ORDER AND JUDGMENT*

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

This matter is before us on the parties *Joint Motion to Remand to Vacate Multiplicitous Counts and for Resentencing*, in which appellant Jason Briscoe and the United States jointly move the court pursuant to 10th Cir. R. 27.3(A)(1)(c) to remand the case to the district court for further proceedings. As grounds for the motion, the parties state: (1) the convictions Mr. Briscoe challenges on appeal are multiplicitous and the district court should have entered judgment and imposed sentence on only one 18 U.S.C. § 924(c) count (not two) and on only one 18 U.S.C. § 922(g) count (not six); and (2) Mr. Briscoe was erroneously assigned two criminal history points for the conviction

* This matter is submitted on the briefs. Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

described in paragraph 60 of his Presentence Investigation Report, which assignment placed him in a higher criminal history category than was appropriate.

Upon consideration, the court grants the motion, dismisses the appeal, and remand the case to district court with instructions to:

- A. Vacate Mr. Briscoe's multiplicitous convictions and enter judgment on only one § 924(c) count and one § 922(g) count, *see United States v. Elliott*, 937 F.3d 1310, 1313-14 (10th Cir. 2019) (remanding to the district court with instructions to vacate multiplicitous convictions where "it is immaterial which . . . conviction remained"); and
- B. In light of the parties' joint motion for remand, conduct any and all proceedings necessary to resentence Mr. Briscoe on the three remaining convictions under criminal history category IV.

The Clerk is directed to issue the mandate forthwith.

Entered for the Court
Per Curiam