

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

June 21, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOHN STEPHEN KISSELL,

Defendant - Appellant.

No. 20-3162
(D.C. No. 5:18-CR-40001-HLT-1)
(D. Kan.)

ORDER AND JUDGMENT*

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

This matter is before the court on the parties' *Joint Motion to Vacate and Remand*. The parties jointly move this court to vacate Appellant John Stephen Kissell's sentence in light of Borden v. United States, 2021 WL 2367312 (S. Ct. June 10, 2021) (holding that criminal offense that requires only a mens rea of recklessness cannot count as a "violent felony" under the Armed Career Criminal Act), and to

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

remand to the district court for further proceedings. The parties agree that Borden resolves this appeal in Mr. Kissell's favor.

Upon consideration, the *Joint Motion to Vacate and Remand* is granted. This matter is remanded with instructions to vacate Mr. Kissell's sentence and conduct further proceedings necessary to resentence him in accordance with Borden.

The Clerk is directed to issue the mandate forthwith.

Entered for the Court

Per Curiam