

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

October 26, 2012

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

GREGORY E. GRAHAM,

Defendant-Appellant.

No. 12-8064
(D.C. No. 2:05-CR-00078-ABJ-2)
(D. Wyo.)

ORDER AND JUDGMENT*

Before **BRISCOE**, Chief Judge, **EBEL**, and **MURPHY**, Circuit Judges.

Defendant Gregory E. Graham appeals from a district court order denying, for lack of jurisdiction, his motion for release pending the disposition of a prior appeal (Appeal No. 12-8031). As the government concedes, the district court erred in concluding it lacked jurisdiction to consider the motion. *See United States v. Meyers*, 95 F.3d 1475, 1488-89 n.6 (10th Cir. 1996). The government asks us to decide the

* This panel has determined that oral argument would not materially assist 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

matter in the first instance, but that would entail a departure from the procedure contemplated in Fed. R. App. P. 9(b) and 18 U.S.C. § 3145(c), and leave us to assess the relevant factors without the aid of the statement of reasons from the district court mandated by Rule 9. Our case law does not support this circumvention of the procedures specified for the orderly resolution of bail matters. *See, e.g., United States v. Fisher*, 55 F.3d 481, 487 (10th Cir. 1995); *United States v. Hart*, 779 F.2d 575, 576 (10th Cir. 1985); *United States v. Affleck*, 765 F.2d 944, 954 (10th Cir. 1985). Because of the district court's jurisdictional misunderstanding, it did not even consider the merits of Mr. Graham's motion for release pending appeal, and a remand of the matter is appropriate.

The order of the district court denying Mr. Graham's motion for release pending appeal for lack of jurisdiction is VACATED, and the case is REMANDED for consideration of the motion on the merits. Mr. Graham's motion for release pending the disposition of the instant appeal is DENIED as moot.

Entered for the Court
Per Curiam