

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

April 14, 2017

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

HERMAN L. GILKEY,

Defendant - Appellant.

No. 16-3105
(D.C. No. 2:10-CR-20115-JWL-JPO-1)
(D. Kan.)

ORDER AND JUDGMENT*

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

This appeal was abated pending a decision by this court in *United States v. Collins*, No. 15-3084. *Collins* was decided on February 14, 2017, and a petition for panel rehearing was granted on April 7, 2017 on a limited basis to issue a revised opinion. This matter is before us on Appellant Herman Gilkey’s *Status Report* wherein he states that the one issue he intended to raise on appeal—whether the statutory maximum term of imprisonment for a subsequent revocation is measured by the penalties applicable to the first revocation instead of the penalties applicable to the initial conviction—was rejected by *Collins*, and he is, therefore, constrained to admit that this court should summarily affirm the district

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

court. Upon consideration of Appellant's status report and in light of this court's decision in *Collins*, the judgment of the district court is affirmed.

The mandate shall issue forthwith.

Entered for the Court
Per Curiam