

August 20, 2010

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

GILBERTO PINON-AYON,

Defendant-Appellant.

No. 10-8001

(D. of Wyo.)

(D.C. No. 09-CR-210-CAB)

ORDER

Before **HARTZ, ANDERSON, and TYMKOVICH**, Circuit Judges.*

Gilberto Pinon-Ayon was convicted of conspiracy to distribute methamphetamine and appealed the district court's decision to enhance his sentence. The United States of America has filed an unopposed motion to vacate the defendant's sentence and remand to the district court for a new sentencing hearing.

Having jurisdiction pursuant to 28 U.S.C. § 1291, we GRANT the motion. We agree the district court should review the evidence and make specific and independent findings to justify an obstruction of justice enhancement pursuant to

* After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. *See* Fed. R. App. P. 34(a); 10th Cir. R. 34.1(G). The cause is therefore ordered submitted without oral argument.

USSG § 3C1.1. *See United States v. Mares*, 441 F.3d 1152, 1160–61 (10th Cir. 2006); *United States v. Markum*, 4 F.3d 891, 897 (10th Cir. 1993). We therefore VACATE Pinon-Ayon’s sentence and REMAND to the district court for a new sentencing hearing. Because we are vacating Pinon-Ayon’s sentence, we do not address his arguments regarding whether the district court erred in including additional methamphetamine in calculating his relevant conduct.

ENTERED FOR THE COURT

Timothy M. Tymkovich
Circuit Judge