

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

APR 25 1997

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

KENNETH N. POWELL,

Defendant-Appellant.

No. 96-5204
(N. Dist. of Oklahoma)
(D.C. No. 91-CR-92E)

ORDER AND JUDGMENT*

Before **SEYMOUR**, Chief Judge, **PORFILIO** and **MURPHY**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

Kenneth N. Powell, proceeding *pro se*, appeals the district court's denial of his motion for recovery of currency and property brought pursuant to Fed. R. Civ.

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

P. 41(e). In his motion, Powell alleged that he was entitled to the return of certain property forfeited through judicial forfeiture proceedings to the United States pursuant to 28 U.S.C. § 881(a). Powell contended that the Orders and Judgments of Forfeiture forfeiting the currency and property to the United States were invalid because he did not receive proper notice of the forfeiture proceedings. The district court denied Powell's motion, holding that the United States' attempted service of the complaint at both of Powell's known residences, as well as its attempted service on Powell's attorney and constructive notice by publication, were "reasonably calculated to give [Powell] actual notice of the forfeiture proceedings." Dist. Ct. Order at 3 (quoting *United States v. 51 Pieces of Real Property*, 17 F.3d 1306, 1317 (10th Cir. 1994)).

"Whether the government employed means reasonably calculated to provide [Powell] actual notice is a question of fact which we review for clear error." *51 Pieces of Real Property*, 17 F.3d at 1316 (citation omitted). This court has considered the district court order, the parties' briefs and contentions, and the entire record on appeal. Finding no clear error, we **AFFIRM** for substantially the reasons set out in the district court's Order dated August 8, 1996.

ENTERED FOR THE COURT,

Michael R. Murphy
Circuit Judge