

**UNITED STATES COURT OF APPEALS**  
**TENTH CIRCUIT**

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**NOV 3 1997**

**PATRICK FISHER**  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ROGER A. FRALIN,

Defendant-Appellant.

No. 97-3044  
(D.C. No. 95-CR-10115)  
(D. Kan.)

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**ORDER AND JUDGMENT\***

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Before **BRORBY, EBEL** and **KELLY**, Circuit Judges.

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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 case is therefore ordered submitted without oral argument.

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\* This order and judgment is not binding precedent except under the doctrines of law of the case, *res judicata* and collateral estoppel.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

Roger A. Fralin challenges the sentence imposed after he pleaded guilty to a Superseding Information charging him with two counts of false representation of a Social Security Number in violation of 42 U.S.C. § 408(a)(7)(B) (1994), and one count of false impersonation of a Secret Service agent with the intent to obtain a thing of value in violation of 18 U.S.C. § 912 (1994). Mr. Fralin presents four issues on appeal. Because we reverse and remand on the first issue, we do not reach the remaining three issues.

At the threshold, Mr. Fralin contends the district court failed to make sufficient findings on his objections to the presentence report pursuant to Fed. R. Crim. P. 32(c)(1). Instead of making specific findings with respect to Mr. Fralin's sentencing objections, as requested by Mr. Fralin's counsel, the district court simply adopted the presentence report as its findings. Mr. Fralin thus contends the present record is insufficient for this court's review and requests that we remand this case to the district court for further findings.

The government concedes this error based upon *United States v. Farnsworth*, 92 F.3d 1001, 1011 (10th Cir.), *cert. denied*, 117 S. Ct. 596 (1996), which holds a district court may not satisfy its obligation to make specific factual

findings on a defendant's objection(s) to a presentence report "by simply adopting the presentence report as its finding."

Our review of the record pertaining to the sentencing proceedings confirms this error. Accordingly, we **REVERSE** and **REMAND** with instructions that the district court enter appropriate findings on Mr. Fralin's objections to the presentence report.

**Entered for the Court**

**WADE BRORBY**  
United States Circuit Judge