

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

SEP 11 1998

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

PAULA CASTILLO ROGERS,

Defendant-Appellant.

No. 97-4169
(D.C. No. 96-CR-023-02)
(D. Utah)

ORDER AND JUDGMENT *

Before **PORFILIO** , **KELLY** , and **HENRY** , Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously to grant the parties' request for a decision on the briefs without oral argument. See Fed. R. App. P. 34(f); 10th Cir. R. 34.1.9. 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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. 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.

Defendant pleaded guilty to one count of malicious destruction of a building by means of a destructive device, in violation of 18 U.S.C. § 844(i). The district court sentenced defendant to thirty-six months in prison and ordered restitution in the amount of \$59,452. This amount included restitution for the offense of conviction as well as for other offenses.

Defendant appeals from the restitution order, arguing that the district court erred in ordering restitution for offenses other than the offense of conviction. Petitioner believes the district court should have limited restitution to \$350, the amount of loss for the offense of conviction. The government correctly concedes that the district court erred in ordering defendant to pay restitution for offenses for which she was not convicted. See Hughey v. United States , 495 U.S. 411, 413 (1990).

We commend the government for recognizing and conceding the error in defendant's sentence. One hallmark of ethical advocacy is making concessions that need to be made. We compliment the government in the hopes of encouraging others to follow this good example.

The restitution order is REVERSED, and the case is REMANDED for resentencing with respect to restitution.

Entered for the Court

Robert H. Henry
Circuit Judge