

UNITED STATES COURT OF APPEALS

NOV 27 1998

TENTH CIRCUIT

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JIMMY DALE HALL, JR., a/k/a Bo
Hall,

Defendant - Appellant.

No. 97-7125

(D.C. No. 97-CR-25-S)

(E. D. Okla.)

ORDER AND JUDGMENT*

Before **ANDERSON, McKAY, and LUCERO**, Circuit Judges.

After examining Defendant-Appellant's brief and the 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.

On May 28, 1997, pursuant to a plea agreement, Defendant pled guilty to one count of possession with intent to distribute methamphetamine. Because

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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 was not present for his sentencing on September 17, 1997, a warrant was issued for his arrest. After Defendant's arrest, he was sentenced on October 29, 1997. The sentencing court found that Defendant had not accepted responsibility for his criminal conduct despite his guilty plea because he had failed to withdraw from criminal conduct while awaiting sentencing. This determination was supported by evidence that Defendant possessed narcotics, firearms, and \$19,000 cash upon his second arrest. See R., Doc. 14 at 2-3. The court also found that he had obstructed justice during the prosecution of the case because he willfully failed to appear for sentencing. Consequently, the court increased Defendant's offense level by five levels and sentenced him to 240 months imprisonment and sixty months supervised release.

Although Defendant filed a notice of appeal to appeal the conviction and sentence, Defendant's counsel moved this court to withdraw as counsel because he believed an appeal was frivolous. In accordance with this court's order to file a brief referring to all matters in the record that might arguably support an appeal pursuant to Anders v. California, 386 U.S. 738, 744 (1967), counsel filed a one-page brief stating that there are no matters in the record to raise on appeal and that the appeal is wholly frivolous. Having carefully considered the record on

appeal and counsel's filings, we affirm Defendant's conviction and sentence and grant counsel's motion to withdraw.

AFFIRMED.

Entered for the Court

Monroe G. McKay
Circuit Judge