

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

**MAY 31 2000**

**PATRICK FISHER**  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

SHAUN DEVIN DEVOY,

Defendant-Appellant.

No. 99-4194

(D.C. No. 97-CR-234-01)

(D. Utah)

**ORDER AND JUDGMENT\***

Before **BALDOCK, HENRY, and LUCERO**, Circuit Judges.\*\*

Defendant Shaun Devin Devoy appeals his sentence, arguing that the district court erred in failing to hold an evidentiary hearing related to his motion under 18 U.S.C. § 3553(e) and U.S.S.G. § 5K1.1 (1998). We exercise jurisdiction

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

\*\* After examining the briefs and appellate record, the panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. See Fed. R. App. P. 34(f); 10th Cir. R. 34.1(A)(2). The case is therefore ordered submitted without oral argument.

pursuant to 18 U.S.C. § 3742(a)(1).<sup>1</sup> We review the district court's factual findings regarding sentencing for clear error and review de novo its legal interpretation of the guidelines. United States v. Maldonado-Acosta, \_\_\_ F.3d \_\_\_, \_\_\_, 2000 WL 485101, at \*1 (10th Cir. Apr. 25, 2000).

After thoroughly reviewing the sealed record and briefs in this case, we affirm the district court's denial of Defendant's motion for substantially the reasons the district court set forth in its September 2, 1999 ruling from the bench. The district court's order of August 20, 1999 sealing the record remains in effect.

AFFIRMED.

Entered for the Court,

Bobby R. Baldock  
Circuit Judge

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<sup>1</sup> Although we do not ordinarily exercise jurisdiction to review discretionary denials of motions under § 5K1.1, see United States v. Neary, 183 F.3d 1196, 1197 (10th Cir. 1999), we have previously exercised jurisdiction in cases similar to Defendant's, see United States v. Cerrato-Reyes, 176 F.3d 1253, 1257 (10th Cir. 1999) (reviewing the denial of a motion for an evidentiary hearing).