

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

July 30, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RICHARD JOHN HERRERA,

Defendant - Appellant.

No. 21-1091
(D.C. No. 1:20-CR-00006-RBJ-1)
(D. Colo.)

ORDER AND JUDGMENT*

Before **MATHESON**, **BACHARACH**, and **PHILLIPS**, Circuit Judges.

This matter is before the court on the parties' Joint Motion for Remand (the "Motion"). Upon consideration, the Motion is granted, as provided below.

This matter is fully remanded to the district court with instructions to vacate the defendant's sentence and to conduct any and all proceedings necessary to resentence the appellant with specific consideration of *Borden v. United States*, 141 S. Ct. 1817 (2021), but also any other matters the district court deems appropriate.

* After examining the parties' motion and the appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Federal Rule of Appellate Procedure 32.1 and Tenth Circuit Rule 32.1.

This appeal is dismissed. The mandate shall issue forthwith.

Entered for the Court

Per Curiam