

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

August 10, 2021

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHRISTOPHER D. BILLINGSLEY,

Defendant - Appellant.

No. 20-6146
(D.C. No. 5:15-CR-00258-F-4)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **TYMKOVICH**, Chief Judge, **BRISCOE**, and **BACHARACH**,
Circuit Judges.

Every appellant must state in the opening brief why the district court erred. *Nixon v. City and Cnty. Of Denver*, 784 F.3d 1364, 1366 (10th Cir. 2015). Here, though, the appellant misunderstood the basis for the district court’s ruling. This misunderstanding led the appellant to argue something

* The parties do not request oral argument, and it would not help us decide the appeal. So we have decided the appeal based on the record and the parties’ briefs. *See* Fed. R. App. P. 34(a)(2)(C); 10th Cir. R. 34.1(G).

Our order and judgment does not constitute binding precedent except under the doctrines of law of the case, *res judicata*, and collateral estoppel. But the order and judgment may be cited for its persuasive value if otherwise appropriate. *See* Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

that was never in dispute: jurisdiction. Because the appellant failed to challenge the actual basis for the district court's ruling, we affirm.

The appellant is Mr. Christopher D. Billingsley, a federal prisoner. He moved for compassionate release based on his comorbidities and the spread of a pandemic. In addressing this motion, the district court noted three requirements: (1) jurisdiction, (2) extraordinary and compelling reasons for compassionate release, and (3) consistency between early release and achievement of the Sentencing Commission's policy statements. The court rejected the motion based on the third requirement, concluding that Mr. Billingsley continued to pose a danger to the public.

Despite this conclusion, Mr. Billingsley's opening appeal brief makes no mention of dangerousness. In the opening brief, Mr. Billingsley instead says that the district court erroneously denied the motion on jurisdictional grounds. This statement is inaccurate, for the district court acknowledged that it had jurisdiction.

Mr. Billingsley also insists in his opening brief that his medical condition constituted extraordinary and compelling reasons for early release. But the district court assumed that Mr. Billingsley's medical condition would qualify as an extraordinary and compelling reason. With this assumption, the district court relied solely on Mr. Billingsley's dangerousness. Mr. Billingsley nonetheless waited until his reply brief to address his dangerousness. That was too late, and omission of the issue in

his opening brief constitutes waiver of the issue. *See White v. Chafin*, 862 F.3d 1065, 1067 (10th Cir. 2017). So we affirm the denial of Mr. Billingsley's motion.¹

Entered for the Court

Robert E. Bacharach
Circuit Judge

¹ Mr. Billingsley also moves for leave to proceed in forma pauperis. We grant this motion.