

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

May 9, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RICKY FACKRELL,

Defendant - Appellant.

No. 22-4107
(D.C. Nos. 2:16-CV-00712-TC &
2:04-CR-00816-TC-1)
(D. Utah)

ORDER AND JUDGMENT*

Before **BACHARACH, KELLY,** and **MORITZ,** Circuit Judges.

Mr. Ricky Fackrell was convicted of Hobbs act robbery and brandishing a firearm during a crime of violence. *See* 18 U.S.C. §§ 1951, 924(c). He moved to vacate the conviction for brandishing a firearm during a crime of violence, arguing that Hobbs Act robbery does not constitute a crime of violence. The district court denied the motion, and Mr. Fackrell appeals. He acknowledges that his appellate argument is foreclosed by

* Because oral argument would not materially aid our consideration of the appeal, we have decided the appeal based on the defendant’s brief and record on appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G).

This 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).

United States v. Baker, 49 F.4th 1348, 1354–59 (10th Cir. 2022). Despite that precedent, he wishes to preserve his argument for en banc review. He may do so; but as a panel, we are bound by our precedential opinion in *Baker*. *United States v. Mazanares*, 956 F.3d 1220, 1225 (10th Cir. 2020). We thus affirm the district court’s denial of Mr. Fackrell’s motion to vacate the conviction for brandishing a firearm during a crime of violence.

Entered for the Court

Robert E. Bacharach
Circuit Judge