

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

August 18, 2023

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DWAYNE EDWARD RASMUSSEN,

Defendant - Appellant.

No. 23-6026
(D.C. No. 5:19-CR-00160-SLP-1)
(W.D. Okla.)

ORDER AND JUDGMENT*

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

This appeal involves the limits on a district court’s authority to resentence a defendant. The issue arises from the district court’s imposition of a life sentence for Mr. Dwayne Rasmussen after he was convicted of armed bank robbery.

* Oral argument 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).

A life sentence was mandatory because Mr. Rasmussen had at least three convictions for crimes regarded as violent felonies:

1. A 1991 federal conviction for bank robbery,
2. a 1992 state conviction for robbery with a firearm, and
3. the present convictions for armed bank robbery.

18 U.S.C. § 3559(c)(1)(A)(i). Under federal law, however, Mr. Rasmussen could be resentenced if a court invalidated one of his prior convictions. 18 U.S.C. § 3559(c)(7).

Mr. Rasmussen moved for resentencing under this federal law, but he didn't question the validity of his conviction in 1991 or 1992. He instead attacked the present convictions for armed bank robbery, arguing that these offenses do "not categorically qualify as a third required serious violent felony." Appellant's Opening Br. at 2. The district court dismissed Mr. Rasmussen's motion.

We agree with this ruling. In the motion, Mr. Rasmussen had relied on a statutory section where the title itself reflected its limited scope: "Resentencing upon overturning of Prior Conviction." 18 U.S.C. § 3559(c)(7). The title shows that the section addresses challenges to a prior conviction used to trigger a mandatory life sentence—not the current conviction. *See FTC v. Mandel Bros., Inc.*, 359 U.S. 385, 388–89 (1959) (stating that a statutory title is "a useful aid in resolving an ambiguity").

So the district court correctly dismissed Mr. Rasmussen's motion for resentencing, and we affirm.¹

Entered for the Court

Robert E. Bacharach
Circuit Judge

¹ We grant Mr. Rasmussen's motion for leave to proceed in forma pauperis.