FILED
United States Court of Appeals
Tenth Circuit

October 23, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GINO CARLUCCI,

Defendant - Appellant.

No. 26-4078
(D.C. No. 2:04-CR-00765-DS-1)
(D. Utah)

ORDER AND JUDGMENT*

Before **BACHARACH**, **McHUGH**, and **CARSON**, Circuit Judges.

This case grew out of the defendant's conviction for misprision of a felony. *See* 18 U.S.C. § 4. For this conviction, the defendant obtained probation for 60 months. After serving part of the term, however, the defendant requested early termination. The district court denied the request, reasoning that early termination was unwarranted in light of

---

* Oral argument would not help us decide the appeal, so we have decided the appeal based on the record and the briefing. *See* Fed. R. App. P. 34(a)(2)(C); 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).

opposition from both the U.S. Attorney and the supervising probation officer and concern that the defendant had inaccurately represented the view of his former supervising probation officer. The defendant argues that (1) the district court should have inquired further to find out what the former probation officer had said and (2) the government mischaracterized the defendant's conviction when opposing his request for early termination.

The first issue is whether the district court could deny early termination without an evidentiary hearing. We affirm because the defendant didn't dispute the district court's understanding of what the probation officer had said.

The defendant bore the burden to show that early termination was warranted by his conduct and the interests of justice. 18 U.S.C. § 3564(c). Trying to satisfy this burden, the defendant represented twice to the district court that his supervising probation officer "supported" his request for early termination. R. at 81, 83.

The government contested these representations, stating that the probation officer hadn't taken any position on the request for early termination. *Id.* at 88. The defendant then explained that

- the probation officer had said that he would tell the court, if asked, that the defendant had done "very well while on probation" and "remained compliant with all conditions of supervision," *id.* at 90–91, and

- the defendant understood the probation officer's statements to mean that he "did not oppose early termination and would communicate Defendant's successful compliance to the Court if requested," *Id.* at 91.

With this explanation, the district court concluded that the defendant had "appear[ed]" to make false statements about the probation officer's position. *Id.* at 96.

The defendant argues that the district court should have decided whether the defendant had actually made a false statement (rather than saying only that he had "appear[ed]" to make a false statement). To address this argument, we apply the abuse-of-discretion standard. *United States v. Hartley*, 34 F.4th 919, 928 (10th Cir. 2022).

In our view, the district court didn't abuse its discretion because the defendant had

- stated in his motion that the probation officer supported early termination and
- acknowledged later that the probation officer would have said only that the defendant had done well in complying with his conditions.

The two statements were different: Acknowledging the defendant's compliance with his conditions isn't the same thing as supporting early termination of probation. Given the difference and the defendant's acknowledgment that the probation officer hadn't actually expressed support for early termination, the district court could reasonably rely on what appeared to be a false statement.

The defendant challenges not only the district court's explanation, but also the government's statement in district court that the defendant had been "convicted of defrauding hundreds of investors in the United Kingdom." R. at 88. Disputing this characterization, the defendant says that he was convicted only of misprision of a felony. For the sake of argument, we can assume that the government had misstated the nature of the conviction. But the district court didn't rely on the government's statement or suggest reliance on the nature of the underlying conviction. *See United States v. Aguilar-Calvo*, 945 F.3d 464, 469–70 (6th Cir. 2019) (declining to assume that the district court relied on the government's "speculative or erroneous" representations at sentencing). So the government's alleged mischaracterization of the conviction doesn't support reversal.

***

The district court didn't abuse its discretion in denying the defendant's request for early termination of probation.

We reject his first argument because the defendant

- said that his probation officer supported the request and
- acknowledged later that the probation officer had actually said only that the defendant was doing well in complying with his conditions.

Given this acknowledgment, the district court reasonably concluded that the defendant had appeared to make a false statement about the probation officer's position.

The defendant insists that the district court should have reached a more definitive conclusion about whether the defendant had made a false statement. But the defendant had already acknowledged what the probation officer had actually said, and the court could reasonably conclude that the defendant had appeared to make a false statement about the probation officer's position.

In denying the request, the district court relied on the defendant's apparent misstatement and the views of the U.S. Attorney and the probation office—not the nature of the defendant's conviction. So the government's alleged mischaracterization of the conviction was immaterial.

Absent an abuse of discretion, we affirm the denial of the defendant's request for early termination of probation.

Entered for the Court

Robert E. Bacharach
Circuit Judge