

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

September 20, 2007

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ADRIAN PLASCENCIA-GOMEZ,

Defendant-Appellant.

No. 06-3343
(D.C. No. 06-CR-10095-WEB)
(D. Kan.)

ORDER AND JUDGMENT*

Before **HARTZ**, Circuit Judge, **BRORBY**, Senior Circuit Judge and **TYMKOVICH**, Circuit Judge.

Due to a clerical error, this matter was originally terminated in an order, rather than an order and judgment. We vacate the order entered on September 20, 2007. In its place we are issuing this order and judgment nunc pro tunc to September 20, 2007.

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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 Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Appellant's Unopposed Motion for Summary Remand is GRANTED. We decline to consider the issue addressed in the parties' appellate briefing, which was raised for the first time on appeal. *See Singleton v. Wulff*, 428 U.S. 106, 120 (1976); *Lyons v. Jefferson Bank & Trust*, 994 F.2d 716, 720-21 (10th Cir. 1993). Appellee's Motion to Supplement Record on Appeal is DENIED. This case is REVERSED and REMANDED to the district court for re-sentencing.

The mandate shall issue forthwith.

Entered for the Court

Timothy M. Tymkovich
Circuit Judge