

May 23, 2014

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JAMES OLIVER REESE,

Defendant-Appellant.

No. 12-2025

(D.C. No. 1:09-CR-02982-JEC-1)

(D.N.M.)

ORDER AND JUDGMENT*

Before **BRISCOE**, Chief Judge, **KELLY** and **GORSUCH**, Circuit Judges.

In this appeal James Reese asks us to overturn his conviction for being a felon unlawfully in possession of firearms. *See* 18 U.S.C. § 922(g)(1).

Overtured because someone (like himself) previously convicted of a felony *may* lawfully possess guns if he “has had civil rights restored.” 18 U.S.C.

§ 921(a)(20). To show that he has had his civil rights restored, a defendant in Mr. Reese’s shoes must prove that he enjoys the right to vote, serve on a jury, possess firearms under *state* law, and hold public office. *United States v. Maines*, 20 F.3d 1102, 1104 (10th Cir. 1994). From the outset of this appeal, everyone has

* This order and judgment is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

acknowledged that Mr. Reese enjoys three of these four rights. The only question we have faced is whether Mr. Reese is entitled to hold public office under New Mexico state law. Given the uncertainty of state law on that question, we certified it to the state supreme court.

That court recently returned an answer: at all points relevant to this case Mr. Reese has enjoyed the right to hold public office. *See United States v. Reese*, No. 33,950, 2014 WL 1716526, at *11 (N.M. May 1, 2014). In light of this guidance, the government acknowledges that Mr. Reese's federal firearms conviction is unsustainable. So it is we reverse Mr. Reese's conviction and remand this matter to the district court with instructions to dismiss the 18 U.S.C. § 922(g) charge against him. The mandate shall issue with the entry of this order on the docket.

Entered for the Court,

Neil M. Gorsuch
United States Circuit Judge