

UNITED STATES COURT OF APPEALS December 3, 2021

TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BERNIE BANUELOS,

Defendant - Appellant.

No. 19-2086
(D.C. No. 1:02-CR-00084-WJ-1)
(D. N.M.)

ORDER AND JUDGMENT*

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

After examining the briefs and the appellate record, this court 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). Accordingly, the case is ordered submitted without oral argument.

In 2002, Appellant Bernie Banuelos was sentenced to 324 months' imprisonment after being found guilty of, *inter alia*, possession with intent to distribute crack cocaine, in violation of 21 U.S.C. § 841(a) and (b)(1)(B). In

*This order and judgment is not binding precedent except under the doctrine of law of the case, res judicata, and collateral estoppel.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

2009, Banuelos's sentence was reduced to 263 months pursuant to a retroactive amendment made to the United States Sentencing Guidelines. *See United States v. Banuelos*, 388 F. App'x 756, 757 (10th Cir. 2010). In 2019, Banuelos again sought reduction of his sentence, this time pursuant to the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194 (2018). The district court denied the motion and this appeal followed.

After Banuelos was released from federal custody on November 4, 2021, the United States filed a motion to dismiss this appeal as moot. *See United States v. Fields*, 823 F. App'x 587, 591 (10th Cir. 2020) (unpublished disposition) (concluding appellant's release from prison mooted his appeal from the denial of his § 3582(c)(1)(B) motion). The motion to dismiss on mootness grounds is not opposed by Banuelos. Accordingly, we **grant** the government's unopposed motion to dismiss this appeal as moot.

ENTERED FOR THE COURT

Michael R. Murphy
Circuit Judge