

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

July 13, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

WALDO NAHLE,

Defendant - Appellant.

No. 20-2008
(D.C. No. 1:16-CR-03304-MV-1)
(D. N.M.)

ORDER AND JUDGMENT*

Before **MATHESON, BACHARACH, and PHILLIPS**, Circuit Judges.**

This matter is before the court on the United States' *Unopposed Motion for Remand*. The United States moves this court to vacate Appellant Waldo Nahle's sentence in light of Borden v. United States, 141 S. Ct. 1817 (2021) (holding that criminal offense that requires only a mens rea of recklessness cannot count as a "violent felony" under the Armed Career Criminal Act), and to remand to the district court for further proceedings. The parties agree that Mr. Nahle's career-offender

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

** Because this matter is being decided on an unopposed motion to remand to the district court, the panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument.

designation was predicated on a prior conviction that is no longer a “violent felony” after Borden.

Upon consideration, the *Unopposed Motion for Remand* is granted. This matter is remanded to the district court with instructions to vacate Mr. Nahle’s sentence and conduct further proceedings necessary to resentence him in accordance with Borden.

The Clerk is directed to issue the mandate forthwith.

Entered for the Court

Per Curiam