

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 21 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 18-35722

Plaintiff-Appellant,

D.C. Nos. 1:16-cv-00102-SPW

v.

1:03-cr-00017-SPW-1

QUINTON BIRDINGROUND Jr.,

MEMORANDUM\*

Defendant-Appellee.

Appeal from the United States District Court  
for the District of Montana  
Susan P. Watters, District Judge, Presiding

Submitted November 15, 2022\*\*

Before: CANBY, CALLAHAN, and BADE, Circuit Judges.

The United States appeals from the district court's order granting Quinton Birdinground Jr.'s 28 U.S.C. § 2255 motion to vacate his conviction and sentence for discharging a firearm during a crime of violence, in violation of 18 U.S.C. § 924(c). We have jurisdiction under 28 U.S.C. § 2253. We review de novo the

---

\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

district court's decision to grant a § 2255 motion, *see United States v. Navarro*, 160 F.3d 1254, 1255 (9th Cir. 1998), and we vacate and remand.

During the pendency of this appeal, this court decided *United States v. Begay*, 33 F.4th 1081 (9th Cir.) (en banc), *cert. denied*, 2022 WL 6573327 (U.S. Oct. 11, 2022). We agree with the government that *Begay* requires that we vacate the district court's order dated July 3, 2018, and the amended judgment entered on August 23, 2018, and remand for further proceedings consistent with *Begay*. *See id.* at 1096 (holding that second-degree murder under 18 U.S.C. § 1111(a) constitutes a "crime of violence" for purposes of § 924(c)(3)).

Birdinground's motion for summary affirmance is denied.

**VACATED and REMANDED.**