

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

October 26, 2018

Elisabeth A. Shumaker
Clerk of Court

GORDON C. REID,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA,

Defendant - Appellee.

No. 17-6100
(D.C. No. 5:12-CV-01416-M)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **BACHARACH**, **BALDOCK**, and **EBEL**, Circuit Judges.**

Gordon C. Reid appeals the district court's dismissal of his suit under the Federal Tort Claims Act for lack of subject matter jurisdiction. The United States has filed a *Motion for Voluntary Remand* explaining that it recently discovered that the record it provided to the district court was incomplete. The government states that it will withdraw the motion to dismiss it filed below and proceed with a new motion on

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

** On October 15, 2018 the court issued an order vacating the oral argument hearing originally set for November 13, 2018. After examining the *Motion for Voluntary Remand* and response this panel has determined unanimously that oral argument would not materially assist in 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.

the full record or with discovery. Further, the government will ask the district court to appoint counsel for Mr. Reid.

Mr. Reid has filed a response to the motion agreeing that the case must be remanded given the government's discovery as to the record and joining the government's suggestion that counsel be appointed in the district court. Given the circumstances of the government's motion, Mr. Reid also asks this court to consider waiving the filing fee for this appeal.

The filing fee is prescribed by statute, and we have no authority to waive it. *See* 28 U.S.C. § 1915(b)(1) (providing that a prisoner appealing a civil case "shall be required to pay the full amount of a filing fee"). Consequently, we deny Mr. Reid's request to be relieved of his obligation to make partial payments towards that fee. *Id.*

The government's *Motion for Voluntary Remand* is granted. This matter is fully remanded to the district court with instructions to vacate its judgment dated March 28, 2017 and to conduct any and all proceedings necessary for a full review of all of Mr. Reid's claims in light of the government's representation that it will withdraw its motion to dismiss. In addition, given the government's statement that it will ask the district court to appoint counsel for Mr. Reid, the district court is strongly encouraged to consider the appointment of counsel.

The mandate shall issue forthwith.

Entered for the Court

Per Curiam