

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

January 16, 2019

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ALBERT DEWAYNE BANKS,

Defendant - Appellant.

No. 15-3324
(D.C. No. 5:13-CR-40060-DDC-1)
(D. Kan.)

ORDER

Before **TYMKOVICH**, Chief Judge, **MATHESON**, and **MORITZ**, Circuit Judges.

This matter is before the court on the parties' *Joint Motion to Reinstate Portions of Previous Order and Judgment Unaffected by Carpenter*. Specifically, the parties have asked that we reinstate those parts of the Order & Judgment filed August 8, 2017 which address the district court's findings concerning drug quantity and the applicability of any leader/organizer enhancement. The judgment associated with the original Order & Judgment was vacated by virtue of the Supreme Court's order dated June 28, 2018. That order granted Mr. Bank's petition for writ of certiorari and remanded this case for further consideration in light of *Carpenter v. United States*, 138 S. Ct. 2206 (2018). The Order & Judgment issued on remand, which was dated October 18, 2018, did not address or incorporate these prior rulings.

Upon consideration, the motion is GRANTED as directed and outlined in this order. The mandate issued as part of the Order & Judgment filed on October 18, 2018 is recalled. Upon recall of that mandate, we reinstate Sections II.E 1 and 2 of the Order & Judgment filed originally on August 8, 2017. Those sections are found at pages 7-11 of the decision. In particular, we reinstate our conclusions, as found in the prior decision, that the district court erred in failing to make particularized findings about the drug quantity attributable to Mr. Banks as relevant conduct and in failing to make findings on Mr. Bank's role (if any) as a leader or organizer based on the USSG § 3B1.1 factors. If upon completion of the pending district court proceedings Mr. Banks is resentenced these rulings shall apply to that resentencing.

The mandate recalled by virtue of this order is hereby reissued forthwith, and the original mandate dated October 18, 2018 is amended consistent with this order.

Entered for the Court



ELISABETH A. SHUMAKER, Clerk