

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

April 19, 2019

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHARMAINE PERALTA,

Defendant - Appellant.

No. 18-2130
(D.C. No. 1:17-CR-00695-JMC-1)
(D. N.M.)

ORDER AND JUDGMENT*

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

This matter is before us on the United States' Unopposed Motion for Remand to the District Court for Resentencing ("Motion"). In the Motion, the United States concedes that the district court committed reversible procedural error when it failed to provide a factual basis in the record for using USSG §2A2.2 to determine Ms. Peralta's base offense level at sentencing. Accordingly, the parties ask us to remand for resentencing so that the district court can correct this procedural error.

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

Upon careful consideration, the Motion is GRANTED. This matter is remanded to the U.S. District Court for the District of New Mexico with instructions to vacate its judgment, and resentence Ms. Peralta in a manner that resolves the aforementioned procedural error. A copy of this order and judgment shall stand as and for the mandate of the court.

Entered for the Court
Per Curiam