

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

December 31, 2019

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVID J. LAWLESS,

Defendant - Appellant.

No. 17-1148
(D.C. Nos. 1:16-CV-01499-WYD and
1:11-CR-00278-WYD-1)
(D. Colo.)

ORDER AND JUDGMENT*

Before **HARTZ, KELLY**, and **MATHESON**, Circuit Judges.

This matter is before us on the parties' *Joint Motion for Summary Disposition*. David Lawless pleaded guilty to one count of using a destructive device to commit a crime of violence in violation of 18 U.S.C. § 924(c). The government has conceded that Mr. Lawless's § 924(c) conviction is invalid under *United States v. Davis*, 139 S. Ct. 2319 (2019), and the parties have agreed that the appropriate remedy is imposition of a judgment of conviction for arson in violation of 18 U.S.C. § 844(i).

* In light of the parties' joint motion, this matter is submitted on the briefs. *See* Fed. R. App. P. 34(a); 10th Cir. R. 34.1(G). This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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 consideration, the *Joint Motion for Summary Disposition* is granted. The oral argument scheduled for January 21, 2020 is vacated, this appeal is dismissed, and this matter is remanded with instructions to the district court to vacate the judgment of conviction for violating 18 U.S.C. § 924(c) that was entered January 11, 2013, enter a judgment of conviction for arson, in violation of 18 U.S.C. § 844(i), and conduct any and all proceedings necessary to resentence Mr. Lawless on the arson conviction in light of the parties' *Joint Motion for Summary Disposition*.

The Clerk is directed to issue the mandate forthwith.

Entered for the Court
Per Curiam