

TENTH CIRCUIT ORAL ARGUMENT CALENDAR

Thursday, September 9, 2021
Denver, CO¹
Special Session

9:00 A.M.

Phillips, McHugh & Moritz

20-1261 CO United States v. Mar-Lopez

1. Is this defendant's sentence procedurally unreasonable because it was based on an impermissible factor -- to send a message to the parties about their agreed-upon sentence?

for the government: Michael Johnson

for the defendant: Jacob Rasch-Chabot (Colorado FPD)

20-1324 CO United States v. Wilson

1. Did the district court err in its denial of compassionate release because it failed to conduct the correct statutory analysis, failed to properly consider the § 3553(a) factors, or erred in finding this defendant was dangerous?

for the government: Paul Farley

for the defendant: Meredith Esser (Colorado FPD)

20-1436 CO United States v. Warren

1. Did the district court err by denying this defendant's motion to reconsider the denial of his First Step Act motion to reduce his crack cocaine sentence because of new circumstances or because of errors in the original order?

for the government: Paul Farley

for the defendant: Josh Lee (Colorado FPD)

20-8031 WY United States v. Lantis

1. Is this defendant's conviction for disorderly conduct in a national park invalid because the government failed to prove he acted with criminal recklessness, including that he was subjectively aware of the risk he created?

for the government: Christyne Martens

for the defendant: Grant Smith (Colorado FPD)

¹ All arguments will be held virtually via Zoom.

Tuesday, September 21, 2021
Denver, CO
Courtroom I

9:00 A.M.

McHugh, Ebel & Eid

20-5072 NOK United States v. Palms

1. Did the district court err by denying the motion to suppress evidence found on the defendant's cell phone because the warrant was insufficiently particular and overly broad?
2. Did the district court err by excluding evidence of a victim's prior sexual behavior, where the evidence was relevant and excluding it violated the defendant's confrontation and due process rights?

for the government: Thomas Duncombe

for the defendant: Blain Myhre (Englewood, CO)

20-7008 EOK United States v. Piette

1. Did the district court plainly err when it instructed the jury that the defendant bore the burden to prove that the victim was no longer held against her will before the statute of limitations expired on a kidnapping charge under 18 U.S.C. § 1201?
2. Did the district court err when it denied this defendant the right to represent himself at sentencing?
3. The statute of limitations for traveling to have sex with a minor under 18 U.S.C. § 2423 began to run when the victim turned 16, and therefore expired before this defendant was indicted. In the interim, two statutes were passed that extended the statute of limitations. Should this defendant's conviction be reversed or did those statutes validly extend the statute of limitations?
4. In this case involving charges of kidnapping and traveling to engage in sex with a minor, did the district court err under Rule 404(b) by admitting evidence that the defendant molested other children?

for the government: Linda Epperley

for the defendant: Alan Mouritsen (Salt Lake City, UT)

20-6154 WOK United States v. Alexander

1. Did the district court err in applying enhancements under USSG § 2K2.1 for using or possessing the charged firearm in connection with attempted murder or any other felony?

for the government: Travis Leverett

for the defendant: Lynn Hartfield (Denver, CO)

20-5091 NOK United States v. Burtrum

1. Does this defendant's mandatory life sentence for sex offenses violate the Eighth Amendment's proportionality requirement?
2. Was there sufficient evidence to support this defendant's conviction for aggravated sexual abuse under 18 U.S.C. § 2241(c) and 2244(a)(5) because there was no evidence of direct skin-to-skin contact between the defendant and the victim, rather than touching through clothing?
3. Did the district court err by awarding restitution under 18 U.S.C. § 2259 because its award was not supported by reasonable certainty of the cost of the victim's future medical needs?

for the government: Leena Alam

for the defendant: Barbara Woltz (Oklahoma FPD)

20-7052 EOK United States v. McDonald

1. Did the district court err in its drug quantity calculations under USSG § 2D1.1 or in applying a use-of-violence increase under USSG § 2D1.1(b)(2) because those findings were not factually supported?
2. Did the district court err by applying an aggravating-role enhancement under USSG § 3E1.1 without a sufficient factual basis?
3. Did the district court err by applying an obstruction of justice increase under USSG § 3C1.1 based on ambiguous conversations?

for the government: Michael Qin

for the defendant: Keith Bradley (Denver, CO)

20-5089 NOK United States v. McIntosh

1. Was this defendant's plea involuntary, where he told the court he had been denied necessary medication, changed his mind four times, and was pressed by the prosecutor and court to plead?
2. Did the district court err by not allowing this defendant to withdraw his plea, where there were questions about the voluntariness of his plea?

for the government: Eleanor Hurney

for the defendant: John Bowlin (Greenwood Village, CO)

Tuesday, September 21, 2021
Denver, CO
Courtroom II

9:00 A.M.

Bacharach, Seymour & Phillips

20-3171 KS United States v. Moore

1. Is this defendant's above-guideline probation-revocation sentence procedurally or substantively unreasonable, where the sentence constituted enforcement of a sentencing bargain the court had previously offered the defendant?

for the government: Molly Gordon

for the defendant: Ed Robinson (Wichita, KS)

20-3233 KS United States v. Cozad

1. Did the district court procedurally err by increasing this defendant's sentence because she pleaded guilty without a plea agreement?

for the government: Robert Parker

for the defendant: Melody Brannon (Kansas FPD)

20-3165 KS United States v. Arellanes-Portillo

1. Did the district court plainly err by applying an aggravating-role enhancement under USSG § 3E1.1 based on this defendant's role in a drug trafficking organization, rather than focusing on the money-laundering conduct?

for the government: Bryan Clark

for the defendant: Jacob Rasch-Chabot (Colorado FPD)

20-3183 KS United States v. Goines (submitted on the briefs)

1. Did the district court err by holding that Congress did not exceed its Commerce Clause power when it banned felons from possessing firearms? If not, is evidence that a firearm once traveled in interstate commerce insufficient to sustain a conviction under § 922(g)(1)?

for the government: Scott Meisler

for the defendant: Paige Nichols (Kansas FPD)

20-3199 KS United States v. Black

1. Did the district court err when it denied this defendant's motion to dismiss the indictment under the Speedy Trial Act because the clock started when the defendant was arraigned in the transferee district after a Rule 20 transfer?

for the government: Sangita Rao

for the defendant: Dan Hansmeier (Kansas FPD)

20-3244 KS United States v. Parada

1. Whether the district court abused its discretion in denying Mr. Parada's motion to reduce sentence under 18 U.S.C. § 3582(c)(1)(A) by conditioning relief on proof of citizenship and relying on unsupported facts.

for the government: Jared Maag

for the defendant: Kayla Gassmann (Kansas FPD)

Tuesday, September 21, 2021
Denver, CO
Courtroom IV

9:00 A.M.

Hartz, Kelly & Carson

20-2175 NM United States v. Krowner

1. Did the district court abuse its discretion when it denied this defendant's motion for compassionate release based on findings that his medical conditions were not new or were not extraordinary and compelling reasons for a reduction, or based on findings that the defendant posed a danger to the public?

for the government: Tiffany Walters

for the defendant: Nicholas Hart (Albuquerque, NM)

20-1420 CO United States v. Lozado

1. Did the district court err when it declined to consider whether this defendant's prior conviction for felony menacing in Colorado was a crime of violence under § 2K2.1 as beyond the scope of the appellate remand?

for the government: Paul Farley

for the defendant: Meredith Esser (Colorado FPD)

20-2147 NM United States v. Benvie

1. Did the district court plainly err by imposing five special conditions of supervised release?
2. Does the oral pronouncement of the conditions control over the written judgment?
3. Did the district court err and infringe on the province of the jury by responding to a jury question about the weight to be given to certain facts in this officer-impersonation case?

for the government: Paige Messec

for the defendant: Josh Lee (Colorado FPD)

20-1214 CO United States v. Murry

20-1241 United States v. Ramcharan (Rajesh)

20-1243 United States v. Ramcharan (Diann)

20-1245 United States v. Harvell

1. Was there insufficient evidence that Defendant Murry conspired to make false statements to obtain immigration benefits, where there was proof of multiple conspiracies and not one single conspiracy?
2. Did the district court err under Rule 201 when it refused to take judicial notice of the contents of an official army document that was relevant to the immigration fraud charges?
3. Did the district court err by refusing to allow counsel to conduct voir dire on racial or ethnic bias in this immigration-fraud case?
4. Did the district court err in giving a "natural and probable consequences" instruction because that instruction was at odds with the specific intent instruction given with respect to the substantive counts?
5. Did the district court abuse its discretion under Rule 404(b) in admitting unnoticed prior bad acts that amounted to a prejudicial evidentiary harpoon?
6. Did the district court err when it refused to submit Pastor Harvell's First Amendment defense instruction to the jury and limited evidence about his mental state and religious practices?
7. Was the evidence sufficient to convict defendant Harvell of aiding and abetting the submission of fraudulent immigration forms under 18 U.S.C. § 1001(a)(3)?

for the government: Marissa Miller

for defendants: Ryan Ray (Tulsa); Grant Smith (Col. FPD); James Hankins (Edmond); Jonathan Willett (Boulder)

Wednesday, September 22, 2021
Denver, CO
Courtroom IV

9:00 A.M.

Tymkovich, Hartz & Moritz

20-2128 NM United States v. Twaddle

1. Did the district court err by assessing enhancements for reckless endangerment (USSG § 3C1.2), aggravating role (USSG § 3E1.1), or possession of a firearm (USSG § 2D1.1(b)(1))?
2. Did the district court abuse its discretion under Rules 403 and 404 by admitting evidence of a prior drug transaction, admitting photographic evidence of firearms seized after the defendant's arrest, or admitting exhibits related to meth without a reliable chain of custody?

for the government: Emil Kiehne

for the defendant: Mary Stillinger (El Paso, TX)

20-2160 NM United States v. Vigil

1. Did the district court abuse its discretion by admitting an alleged sexual assault victim's statements under various hearsay exceptions when the government failed to prove when the statements occurred?
2. Did the government fail to meet its burden to prove that the district court had subject matter jurisdiction because the government relinquished federal interest in this tribal land?

for the government: Kyle Nayback

for the defendant: Devon Fooks (New Mexico FPD)

20-2106 NM United States v. Fernandez

1. Did the district court err by denying the motion to suppress evidence found when an agent lifted and felt the defendant's bag, which he had placed in an overhead compartment on a bus?
2. Was the evidence sufficient to convict this defendant of a drug charge based on circumstantial evidence?
3. Did the district court err when it invoked privileges to end questioning about a DEA informant?

for the government: Emil Kiehne

for the defendant: Esperanza Lujan (New Mexico FPD)

19-2118 NM United States v. Perez-Velasquez

19-2133 United States v. Bracamonte-Gasparini

19-2134 United States v. Alvarado-Diaz

1. Was there insufficient evidence that this defendant entered the country without inspection, where the evidence showed that she was under surveillance at all times?

for the government: Dustin Segovia

for the defendants: Gia McGillivray (New Mexico FPD)

20-4109 UT United States v. Hemmelgarn (submitted on the briefs)

1. Did the district court abuse its discretion when it denied this defendant's motion for compassionate release based on the risk of COVID-19, because the defendant did not establish that he had a medical condition that placed him at a high risk of complications if he contracted the virus?

for the government: Jennifer Williams

for the defendant: pro se

Thursday, September 23, 2021
Denver, CO
Courtroom IV

9:00 A.M.

McHugh, Baldock & Briscoe

20-6101 WOK United States v. Rasmussen

1. Did the district court err when it denied the defendant's motion to dismiss, where the government, after failing to obtain a conviction on one count, indicted the defendant on three more counts?
2. Did the district court err by not severing 4 bank robbery counts that occurred on different days/locations?
3. Did the district court err by applying enhancements for robbing a financial institution, use of a dangerous weapon, and leader/organizer, where those enhancements were either double-counting or not supported by the facts?
4. Did the district court err by sentencing this defendant to mandatory life, when the prior convictions used as predicates were legally infirm in various ways?

for the government: Wilson McGarry

for the defendant: David Autry (Oklahoma City, OK)

20-4106 UT United States v. Gates

1. Did the district court err by finding reasonable suspicion to stop this defendant two separate times?

for the government: Jennifer Williams

for the defendant: Jessica Stengel (Utah FPD)

20-6109 WOK United States v. Ojimba

1. Is this defendant's sentence procedurally unreasonable because he received an enhancement based on acquitted conduct?
2. Was this defendant denied his right to present a complete defense because the jury was not permitted to learn he had previously been acquitted of related charges?
3. Did the district court err by admitting evidence of a WhatsApp chat because the evidence was unauthenticated, unreliable, and prejudicial?
4. Because the defendant was previously acquitted of certain charges, should the government have been estopped from introducing testimony about the conduct underlying those charges in a different trial?

for the government: Nick Coffey

for the defendant: David Autry (Oklahoma, OK)

20-6069 WOK United States v. Ritchie

1. Did the district court err by applying a career offender increase under USSG § 4B1.2 because this defendant's prior Oklahoma drug conviction is not a controlled substance offense?
2. In this meth distribution case, did the district court plainly err by admitting evidence that the defendant had prior convictions for trafficking a different drug?

for the government: Wilson McGarry

for the defendant: Howard Pincus (Colorado FPD)

20-6078 WOK United States v. Bruley

1. Did the district court plainly err by imposing a revocation sentence that, when combined with the initial sentence, exceeded the statutory maximum term of imprisonment for the underlying drug offense?

for the government: David McCrary

for the defendant: Katie Shen (Colorado FPD)

20-5079 NOK United States v. Royer

1. Did the district court plainly err in imposing a term of supervised release without specifying which conviction was the basis for that supervision term?
2. Did the district court err because the written judgment includes two conditions of supervised release that were not orally pronounced?

for the government: Leena Alam

for the defendant: Howard Pincus (Colorado FPD)