

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

May 11, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

THOMAS RAY GURULE,

Defendant - Appellant.

No. 21-4151
(D.C. Nos. 2:21-CV-00344-DN &
2:04-CR-00209-DN-1)
(D. Utah)

ORDER AND JUDGMENT*

Before **MORITZ, EID**, and **ROSSMAN**, Circuit Judges.

Thomas Ray Gurule obtained this court's authorization and filed a second 28 U.S.C. § 2255 motion invoking *United States v. Davis*, 139 S. Ct. 2319 (2019), to challenge his three-strikes sentence under 18 U.S.C. § 3559(c)(1). The district court denied the motion as untimely. After this court issued a certificate of appealability, the United States filed a response brief conceding that the § 2255 motion was timely

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

and requesting that this court remand for further proceedings in the district court.

Mr. Gurule's reply brief agreed with the United States.

In light of the United States' concession as to timeliness and the parties' agreement that remand is appropriate, we reverse the district court's judgment and remand for further proceedings. The Clerk shall issue the mandate forthwith.

Entered for the Court

Allison H. Eid
Circuit Judge