

**UNITED STATES COURT OF APPEALS**  
**FOR THE TENTH CIRCUIT**

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**AUG 21 2000**

**PATRICK FISHER**  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MICHAEL MCPHILOMY, JR.,

Defendant-Appellant.

No. 00-4138  
(D.C. No. 99-CR-555-C)  
(D. Utah)

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**ORDER AND JUDGMENT\***

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Before **EBEL, KELLY, and LUCERO**, Circuit Judges.

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After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist 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.

Appellant Michael McPhilomy, Jr., appeals from a district court order denying him release on bail pending appeal of his sentence following conviction

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

of depredation of government property, in violation of 18 U.S.C. § 1361, and theft of public property, in violation of 18 U.S.C. § 641. Based upon our review of the parties' briefs and appellant's Appendix, we conclude that appellant has not met the burden of demonstrating the existence of a substantial question of law or fact likely to result in reversal, an order for a new trial, a sentence that does not include a term of imprisonment, or a reduced sentence. See 18 U.S.C. § 3143(b)(1)(B); Fed. R. App. P. 9(c); *United States v. Affleck*, 765 F.2d 944, 953 (10th Cir. 1985).

Accordingly, the judgment of the United States District Court for the District of Utah is AFFIRMED.

ENTERED FOR THE COURT  
PER CURIAM