

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

November 28, 2006

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MICHAEL COLLEY,

Defendant-Appellant.

No. 06-2189
(D.C. No. CR-04-1460-JH)
(D. N.M.)

ORDER AND JUDGMENT*

Before **MURPHY, McCONNELL, and TYMKOVICH**, Circuit Judges.

On September 19, 2006, the government filed a motion to enforce the plea agreement executed by the parties. This court granted defendant two extensions of time to file his response to the motion. The first extension required that defendant's response be filed on October 16, and the second extended the response date to October 26.¹ To date, defendant has not filed a response.

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel.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

¹ On October 30, defendant, through his counsel, filed a motion to dismiss
(continued...)

Upon consideration of the unopposed motion to enforce the plea agreement, along with the plea agreement, plea hearing transcript and sentencing hearing transcript attached to the motion, we GRANT the motion and DISMISS the appeal. The mandate shall issue forthwith.

ENTERED FOR THE COURT
PER CURIAM

¹(...continued)

the appeal. Because the motion was deficient, this court, on October 31, denied the motion without prejudice to re-file in compliance with 10th Cir. R. 46.3(B). Apparently, defendant has chosen not to re-file his motion.