

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

APR 7 1997

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

RODNEY LYNN ZARATE,

Defendant-Appellant.

No. 96-2046

(D.C. No. CR 95-552 LH)

(D.N.M.)

ORDER AND JUDGMENT*

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

Mr. Zarate appeals from the without prejudice dismissal of an indictment, contending that the dismissal should have been with prejudice. The district court dismissed the indictment based upon the government's noncompliance with the "30 day rule." See 18 U.S.C. § 3161(b) (generally, information or indictment must be filed within 30 days from arrest or service of summons); Aplt. App. 18, 47. The district court's

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

** After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

dismissal without prejudice under 18 U.S.C. § 3162(a)(1) is interlocutory and not an appealable order. United States v. Tsosie, 966 F.2d 1357, 1361-62 (10th Cir.), cert. denied, 506 U.S. 928 (1992).

APPEAL DISMISSED.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge