

UNITED STATES COURT OF APPEALS

DEC 22 1997

TENTH CIRCUIT

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

THOMAS TURNER,

Defendant - Appellant.

No. 97-2154

(D.C. No. CV-96-519 JP/JHG)

(D. New Mex.)

ORDER AND JUDGMENT*

Before **ANDERSON, McKAY, and LUCERO**, Circuit Judges.

After examining Appellant's brief and the 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); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

Appellant claims that his conviction was fundamentally defective because he was allowed to plead guilty to conduct that was not a crime, in violation of his right to due process. Mr. Turner appeals the district court's denial of his Motion to Vacate, Set Aside,

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

or Correct Sentence pursuant to 28 U.S.C. § 2255, and the district court's dismissal of his action.

We grant Appellant's motion for leave to proceed without prepayment of costs or fees, and we grant Appellant a certificate of appealability. We affirm the judgment for the reasons given in the magistrate judge's Proposed Findings and Recommended Disposition, as adopted and supplemented by the district court in its Order filed April 1, 1997.

AFFIRMED.

Entered for the Court

Monroe G. McKay
Circuit Judge