

**FILED**  
**United States Court of Appeals**  
**Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**September 24, 2012**

**FOR THE TENTH CIRCUIT**

**Elisabeth A. Shumaker**  
**Clerk of Court**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GERALD L. McELROY,

Defendant - Appellant.

No. 12-3169  
(D.C. No. 2:11-CR-20089-CM-1)

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**ORDER**

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Before **KELLY, MURPHY, and GORSUCH**, Circuit Judges.

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This matter is before the court on Appellant’s Motion for Summary Disposition and the Government’s response. Appellant Gerald L. McElroy seeks an order vacating his sentence and remanding the case for resentencing in light of this court’s decision in *United States v. Huizar*, 688 F.3d 1193 (10th Cir. Jul. 17, 2012). The Government does not oppose resentencing. Upon consideration, the motion is granted. This matter is remanded with instructions for the district court to vacate Mr. McElroy’s sentence and to conduct all proceedings necessary for resentencing. This appeal is terminated.

A copy of this order shall stand as and for the mandate of the court.

Entered for the Court  
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in cursive script, appearing to read "Jane K. Castro", with a long horizontal flourish extending to the right.

by: Jane K. Castro  
Counsel to the Clerk