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USA v. Marcus Walker

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

15-4062

UNITED STATES OF AMERICA

v.

MARCUS WALKER,
Appellant

On Appeal from the District Court
for the Eastern District of Pennsylvania
(E.D. Pa. 2-13-cr-00391-002)
Honorable Legrome D. Davis, U.S. District Judge

On Remand from the Supreme Court of the United States
on June 27, 2022
Submitted on Remand Under Third Circuit L.A.R. 34.1(a)
on July 29, 2022

Before: JORDAN, KRAUSE, and ROTH, *Circuit Judges*

(Opinion filed: August 9, 2022)

OPINION*

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

PER CURIAM

On June 27, 2022, the United States Supreme Court remanded this case to this Court for further consideration in light of *United States v. Taylor*, No. 20-1459, 142 S. Ct. 2015 (2022). Docket #137. It appears that, in the interest of expediting a resolution, the parties proceeded to negotiate an agreement and the District Court took actions, including by issuing a resentencing order on August 2, 2022. *See* Docket # 141.

Though no doubt well-intentioned, the District Court at all relevant times lacked power to issue any order in this case, as the mandate was, and remains, with this Court, and the parties' request should have been directed to this Court in the first instance. *See, e.g., Oracare DPO, Inc. v. Merin*, 972 F.2d 519, 523 (3d Cir. 1992) (citing 28 U.S.C. § 2106). The District Court's Order of August 2 therefore has no legal force and should be stricken from the docket.

Anticipating the desire of the District Court and the parties, we will now remand this case to the District Court for further proceedings in the proper exercise of its authority.