

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. CR-05-043-RAW
)	
JIMMY C. CHISUM,)	
)	
Defendant.)	

ORDER

Before the Court is the motion of the defendant for judgment of acquittal. Defendant was convicted by a jury of four counts of tax evasion. On appeal, the United States Court of Appeals for the Tenth Circuit affirmed the convictions, but reversed his sentence and remanded for re-sentencing. *See United States v. Chisum*, 2007 WL 2769647 (10th Cir.).

The defendant essentially repeats arguments that have been rejected. Moreover, his convictions have now been affirmed on appeal. The mandate rule generally requires trial court conformity with the articulated appellate remand. *United States v. Moore*, 83 F.3d 1231, 1234 (10th Cir.1996). The defendant’s only present recourse in overturning his convictions is the United States Supreme Court.

This Court does note that at the conclusion of its opinion the Tenth Circuit said that, on remand, defendant would have the opportunity to argue the effect of *Cunningham v. California*, 127 S.Ct. 856 (2007) on Tenth Circuit precedent relating to reliance on judge-found facts under advisory Sentencing Guidelines. Defendant should be aware that the

appellate court recently stated “this well-established precedent is unaffected by the Supreme Court’s decision in *Cunningham*.” *United States v. Trujillo*, 2007 WL 2562110 (10th Cir.).

It is the Order of the Court that the motion for judgment of acquittal (#157) is hereby DENIED.

ORDERED THIS 29th DAY OF OCTOBER, 2007.

Dated this 29th Day of October 2007.

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A handwritten signature in cursive script, reading "Ronald A. White", written in black ink over a horizontal line.

Ronald A. White
United States District Judge
Eastern District of Oklahoma