

Fed judge vacates Utah's 30-month prison sentence

By **Angie Welling**

Deseret Morning News

Published: Wednesday, March 10, 2004 9:52 p.m. MST

A federal judge has wasted no time in complying with an appeals court ruling that a man be released from a Nevada prison.

U.S. District Judge J. Thomas Greene signed the release order Tuesday, the same day the 10th U.S. Circuit Court of Appeals ordered Arturo Romero's conviction and sentence be vacated.

According to a clerk at the federal prison camp at Nellis Air Force Base in Las Vegas, Romero was scheduled to be released Wednesday. He has been at the minimum-security prison since October, when he was sentenced to 30 months behind bars.

Defense attorney Michael Holje praised the court's decision, which he described as a long time coming.

"He shouldn't have spent a single day in prison," Holje said. "He was very cooperative from day one. He had a binding agreement with the federal government that said he shouldn't go to prison. It was very unfortunate that he did."

Romero was indicted in September 2002 with one count of conspiring to possess or distribute ephedrine. However, the charge was in direct contradiction with an arrangement Romero had with law enforcers to assist in the prosecution of two other men.

Believing Romero had failed to uphold his side of the agreement, a state prosecutor working with the U.S. Attorney's Office for Utah mistakenly sought the indictment against Romero. The prosecutor moved two times to dismiss the indictment, but Greene denied both motions. Defense attorneys also tried, and failed, to have the charge thrown out.

In Tuesday's ruling, the 10th Circuit found that Greene erred in denying the motions to dismiss and noted the importance of requiring the government to uphold its agreements.

"The crucial issue here, recognized by both parties, is the primacy of the government living up to its word in the agreements it makes," the ruling states. "Public confidence in the judicial system would be severely undermined if defendants were to make agreements with the government which the courts declined to enforce."

The appeals court noted that, contrary to the prosecutor's original belief, Romero did cooperate with the government. Court documents indicate Romero testified against one man twice, as the man's original jury trial ended in a mistrial.

The second man fled after being released from custody pending trial. He remains a fugitive.

Prosecutors joined Romero's defense attorney in asking the 10th Circuit to vacate Romero's conviction and sentence.

"Obviously a mistake was made in indicting him in the first place. We admitted that in the district court and again in the 10th Circuit," said Melodie Rydalch, spokeswoman for the U.S. Attorney's Office. "We're very pleased with the decision, because it was the right thing to do."

Holje spoke with Romero following the court's ruling, and said he is thrilled to be coming home after too many months behind bars.

"Obviously he's very, very happy," Holje said. "He can't wait to get back to his family, to his work."

E-mail: awelling@desnews.com

© 2009 Deseret News Publishing Company | All rights reserved