

FEB 13 2013

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSEPH JEFFEREY BRICE, AKA Joseph
Jeffrey Brice,

Defendant - Appellant.

No. 12-30191

D.C. No. 2:11-cr-00075-LRS-1

ORDER*

Appeal from the United States District Court
for the Eastern District of Washington
Lonny R. Suko, District Judge, Presiding

Argued and Submitted February 6, 2013
Seattle, Washington

Before: FISHER, GOULD, and PAEZ, Circuit Judges.

Appellant Brice's appeal is DISMISSED for lack of jurisdiction. *See Mohawk Indus., Inc. v. Carpenter*, 130 S. Ct. 599, 606–07 (2009). Construing the appeal as a petition for writ of mandamus, the petition is DENIED because Brice does not show that the district court clearly erred, *see Perry v. Schwarzenegger*,

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

591 F.3d 1147, 1156 (9th Cir. 2010), and because analysis of the factors to be considered under *Bauman v. United States District Court*, 557 F.2d 650, 654–55 (9th Cir. 1977), does not support the grant here of the extraordinary remedy of mandamus relief.

The stay ordered by our court on July 11, 2012, of the district court's order of May 31, 2012, is VACATED, and the district court may tender the documents involved in this appeal to the United States of America and its employees. Further, the United States of America and its employees may review, discuss, disseminate, and otherwise use the materials and the information contained therein. The district court is encouraged in the interests of justice to provide Brice's counsel with copies of the materials simultaneously, under a protective order barring the disclosure of the documents or information in them by Brice's counsel to any person other than his own client Brice or to any court having jurisdiction over such matter, so that Brice's counsel can argue to the district court that any of the seized documents, or information within those documents, should not be considered by the district court in sentencing.

It is so ORDERED.