

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
FRAZER SCOTT PICCOLO,
Defendant-Appellant.

No. 04-10577
D.C. No.
CR-04-00083-
LRH/PAL
District of Nevada,
Las Vegas
ORDER

Filed April 20, 2006

Before: Betty B. Fletcher, John R. Gibson,* and
Marsha S. Berzon, Circuit Judges.

ORDER

The opinion filed April 3, 2006, slip op. 3655, is hereby amended as follows:

1. Third line of slip op. 3666, before “*United States v. Bryant*” add the following: “*United States v. Thomas*, 361 F.3d 653, 657-60 (D.C. Cir. 2004) (concluding under a categorical approach that “the offense of escape is a crime of violence within the meaning of . . . § 4B1.2(a)”), *vacated and remanded*, 543 U.S. 1111 (2005) (remanding in light of *United States v. Booker*, 543 U.S. 220 (2005));”

*The Honorable John R. Gibson, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

2. Fourth line from the bottom of slip op. 3666, delete “Our view is that the powder-keg “approach taken by the other circuits proves too much.” *United States v. Thomas*, 333 F.3d 280, 282 (D.C. Cir. 2003).” Add “In our view, the powder-keg rationale adopted by other circuits proves too much.”

3. Third line of slip op. 3667, delete “*See Thomas*, 333 F.3d at 283 (distinguishing the case of “[a] prisoner not returning to a halfway house,” which “may not inherently create a risk of harm to others”);” Add: “*See*”.

PRINTED FOR
ADMINISTRATIVE OFFICE—U.S. COURTS
BY THOMSON/WEST—SAN FRANCISCO

The summary, which does not constitute a part of the opinion of the court, is copyrighted
© 2006 Thomson/West.