

June 24, 2008

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

BERNEY EDLIN,

Defendant-Appellant.

No. 08-3040
(D.C. No. 2:06-CR-20174-KHV-1)
(D. Kan.)

ORDER AND JUDGMENT*

Before **TACHA, MURPHY, and McCONNELL**, Circuit Judges.

The government moves to enforce the appeal waiver it entered into with Berney Edlin. Citing *Anders v. California*, 386 U.S. 738 (1967), Mr. Edlin's response concedes that there are no meritorious grounds to counter the motion as his sentence is within the Guidelines range and did not exceed the statutory maximum and the plea agreement did not require a sentence at the low end of the

* This panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Guidelines range. Nonetheless, Mr. Edlin asks us to consider the relevant record to determine whether the appeal waiver should be enforced.

After considering the government's appendix and independently applying the three-pronged analysis set forth in *United States v. Hahn*, 359 F.3d 1315, 1325 (10th Cir. 2004) (en banc) (per curiam), we conclude that the government's motion to enforce should be granted.

Accordingly, we GRANT the government's motion to enforce the appeal waiver. This appeal is DISMISSED. The mandate shall issue forthwith.

ENTERED FOR THE COURT

PER CURIAM