

UNITED STATES COURT OF APPEALS

December 5, 2012

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ROBERT T. MCALLISTER,

Defendant-Appellant.

No. 12-1387
(D.C. No. 1:11-CR-00283-PAB-1)
(D. Colo.)

ORDER AND JUDGMENT*

Before **BRISCOE**, Chief Judge, **KELLY** and **HARTZ**, Circuit Judges.

This matter is before the court on the government's motion to enforce the appeal waiver contained in defendant Robert T. McAllister's plea agreement. The defendant pleaded guilty to three counts of fraud. Pursuant to the plea agreement, McAllister waived his right to appeal his conviction or sentence, provided the sentence was within the statutory maximum authorized by law and did not upwardly

* This panel has determined 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

depart from the sentencing guideline range. The district court sentenced McAllister to 78 months' imprisonment, the low end of the guideline range. Nevertheless, McAllister filed a notice of appeal.

The government filed its motion to enforce the plea agreement pursuant to *United States v. Hahn*, 359 F.3d 1315 (10th Cir. 2004) (en banc) (per curiam).

McAllister has chosen not to file a response.

We have reviewed the motion and the record, and agree that McAllister's proposed appeal falls within the scope of the appeal waiver, that he knowingly and voluntarily waived his appellate rights, and that enforcing the waiver would not result in a miscarriage of justice. *See id.* at 1325 (describing the factors this court considers when determining whether to enforce a waiver of appellate rights).

Accordingly, we GRANT the motion to enforce the plea agreement and DISMISS the appeal.

Entered for the Court
Per Curiam