

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

October 29, 2021

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CESAR GUTIERREZ,

Defendant - Appellant.

No. 21-4056
(D.C. No. 2:17-CR-00335-TS-DBP-3)
(D. Utah)

ORDER AND JUDGMENT*

Before **TYMKOVICH**, Chief Judge, **KELLY**, and **CARSON**, Circuit Judges.

Cesar Gutierrez pleaded guilty to conspiracy to distribute methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and 846. He was sentenced to 164 months’ imprisonment. Although his plea agreement contained a waiver of his appellate rights, he filed a notice of appeal. The government has moved to enforce the appeal waiver in the plea agreement pursuant to *United States v. Hahn*, 359 F.3d 1315 (10th Cir. 2004) (en banc) (per curiam).

Under *Hahn*, we consider “(1) whether the disputed appeal falls within the scope of the waiver of appellate rights; (2) whether the defendant knowingly and

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

voluntarily waived his appellate rights; and (3) whether enforcing the waiver would result in a miscarriage of justice.” *Id.* at 1325.

Counsel for Mr. Gutierrez filed a response to the government’s motion “acknowledg[ing] that his appeal waiver is enforceable on the current record under the standard set out in . . . *Hahn*,” Resp. at 1, and requesting permission to withdraw. Because counsel’s response also stated that Mr. Gutierrez “disagrees with counsel’s assessment of the case and would request that this Court give him an opportunity to respond to the motion to enforce pro se,” *id.* at 4, we invited Mr. Gutierrez to respond to the government’s motion. The deadline for his response has passed, and we have not received a response from Mr. Gutierrez.

Based on counsel’s concession and our independent review of the record, we grant the government’s motion to enforce the appeal waiver, grant the motion to withdraw, and dismiss the appeal.

Entered for the Court
Per Curiam