

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

October 18, 2017

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TODD GRAVES,

Defendant - Appellant.

No. 17-4099
(D.C. No. 2:16-CR-00494-TS-2)
(D. Utah)

ORDER AND JUDGMENT*

Before **HARTZ, MATHESON, and BACHARACH**, Circuit Judges.

This matter is before the court on the government's motion to enforce the appeal waiver contained in defendant Todd Graves's plea agreement. Graves pleaded guilty to being a felon in possession of a firearm. Pursuant to the plea agreement, he waived his right to appeal his conviction or sentence, provided his sentence was within the statutory maximum and not above the advisory guideline range determined by the district court to apply. Graves's sentence was below the statutory maximum and within the advisory guidelines range. Nevertheless, he filed a notice of appeal.

* This panel has determined unanimously that oral argument would not materially assist in 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel.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.

The government filed a motion to enforce the plea agreement pursuant to *United States v. Hahn*, 359 F.3d 1315, 1328 (10th Cir. 2004) (en banc) (per curiam). In response, Graves's counsel did not provide any reason why the appeal waiver should not be enforced. This court gave Graves an opportunity to file a pro se response to the motion to enforce, but he has not done so.

We have reviewed the motion and the record, and we conclude that Graves's proposed appeal falls within the scope of the appeal waiver and that nothing in the record indicates that he did not knowingly and voluntarily waive his appellate rights or that enforcing the waiver would result in a miscarriage of justice. *See id.* at 1325 (describing factors this court considers to determine whether to enforce an appeal waiver).

Accordingly, we grant the motion to enforce the appeal waiver and dismiss the appeal.

Entered for the Court
Per Curiam