

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

April 1, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LAWRENCE PAUL HERRING,

Defendant - Appellant.

No. 21-4016
(D.C. No. 2:15-CR-00743-TS-1)
(D. Utah)

ORDER AND JUDGMENT*

Before **BACHARACH, McHUGH**, and **EID**, Circuit Judges.

Lawrence Paul Herring pleaded guilty to possessing child pornography. The district court imposed a prison term below the advisory Sentencing Guidelines range. Although Mr. Herring's plea agreement included a broad waiver of his appellate rights, he has filed a notice of appeal. The government moves to enforce the appeal waiver and dismiss this appeal under *United States v. Hahn*, 359 F.3d 1315 (10th Cir. 2004) (en banc) (per curiam).

We will enforce an appeal waiver if (1) "the disputed appeal falls within" the waiver's scope; (2) "the defendant knowingly and voluntarily waived his

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

appellate rights”; and (3) enforcing the waiver would not “result in a miscarriage of justice.” *Id.* at 1325. The government argues that all three of these circumstances exist in this case.

Mr. Herring’s counsel has responded, stating that she “is unaware of any basis to oppose” the government’s motion. *Aplt. Resp.* at 1. We need not address a *Hahn* prong that a defendant does not dispute. *See United States v. Porter*, 405 F.3d 1136, 1143 (2005). Because Mr. Herring does not dispute any of the *Hahn* prongs, we enforce his appeal waiver and dismiss this appeal.

Entered for the Court
Per Curiam