

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

October 14, 2021

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MANUEL EMILIO ACEVEDO,

Defendant - Appellant.

No. 21-5055
(D.C. No. 4:20-CV-00275-CVE-2)
(N.D. Okla.)

ORDER AND JUDGMENT*

Before **TYMKOVICH**, Chief Judge, **HARTZ** and **BACHARACH**, Circuit Judges.

Manuel Emilio Acevedo pleaded guilty to drug conspiracy and possession of heroin with intent to distribute, in violation of 21 U.S.C. §§ 846, 841(b)(1)(A)(i), 841(a)(1), and 841(b)(1)(B)(i). He was sentenced to 120 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).

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

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

In response to the government’s motion, Mr. Acevedo, through counsel, concedes that he “waived the right to appeal any sentence that does not exceed the statutory maximum, and he received a sentence that is below the statutory maximum,” such that the appeal falls within the scope of the waiver, Resp. at 2; that “the waiver was knowing and voluntary,” *id.* at 3; and that “nothing in the record suggests the district court relied on an impermissible factor . . . or that the waiver was otherwise unlawful,” *id.* Therefore, counsel concedes “that there is no viable, non-frivolous basis for opposing the Motion.” *Id.* at 4.

Based on this concession and our independent review of the record, we grant the government’s motion to enforce the appeal waiver and dismiss the appeal. This dismissal does not affect Mr. Acevedo’s right to pursue post-conviction relief on the grounds permitted in his plea agreement.

Entered for the Court
Per Curiam