

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

August 15, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RAFAEL CAMPOS BARRALES,

Defendant - Appellant.

No. 23-4050
(D.C. No. 2:22-CR-00229-HCN-1)
(D. Utah)

ORDER AND JUDGMENT*

Before **HOLMES**, Chief Judge, **PHILLIPS** and **ROSSMAN**, Circuit Judges.

The government moves to enforce the appeal waiver in Rafael Campos Barrales’s plea agreement under *United States v. Hahn*, 359 F.3d 1315 (10th Cir. 2004). We have jurisdiction under 28 U.S.C. § 1291, grant the motion to enforce, and dismiss the appeal.

Mr. Barrales pleaded guilty to possession of methamphetamine with intent to distribute. Under the terms of his plea agreement, the parties agreed to a stipulated sentence of 58 months in prison. Additionally, Mr. Barrales waived his right to appeal unless “the Court reject[ed] the plea agreement and determined that a sentence different from the agreed upon sentence of 58 months’ imprisonment will be imposed,” Mot. to

* This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel.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

Enforce, Attach. A at 4, ¶ 13.b.(2), or the court imposed a sentence “greater than the sentence set forth in [the plea] agreement,” *id.* at 5, ¶ 13.j.(1). He also “waived [his] right to challenge [his] sentence, unless the sentence imposed [was] greater than the sentence set forth in [the plea] agreement, and [his] conviction, in any collateral review motion . . . under 28 U.S.C. § 2255, except on the issue of ineffective assistance of counsel.” *Id.* at 5, ¶ 13.j.(2). By signing his written plea agreement and responding to the court’s questions during the change of plea hearing, Mr. Barrales confirmed that he was entering his plea knowingly and voluntarily and that he understood its consequences, including the possible sentence and his appeal waiver. The court accepted his guilty plea and sentenced Mr. Barrales to 58 months in prison, in accord with the plea agreement. Nevertheless, Mr. Barrales appealed.¹

In ruling on a motion to enforce, we consider whether the appeal falls within the scope of the waiver, whether the waiver was knowing and voluntary, and whether enforcing it would result in a miscarriage of justice. *Hahn*, 359 F.3d at 1325.

In his counselled response to the government’s motion to enforce, Mr. Barrales concedes there is no reasonable basis for disputing the validity of the appeal waiver or “for asserting that enforcement of the appeal waiver would result in a miscarriage of justice under” *Hahn*. Resp. at 2 (internal quotation marks omitted). Accordingly, we grant the government’s motion to enforce the appeal waiver and dismiss the appeal.

¹ Mr. Barrales’s docketing statement indicates he intended to raise the following issue on appeal: “Whether the term of imprisonment imposed by the District Court Judge and contained in the plea statement, exceeds the sentencing guideline range.” Docketing Statement at 5.

See United States v. Porter, 405 F.3d 1136, 1143 (10th Cir. 2005) (noting the court need not address unchallenged *Hahn* factors).

Entered for the Court
Per Curiam