

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4247

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

VICTOR LEBRON, a/k/a Victor Labron,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Big Stone Gap. James P. Jones, District Judge. (2:17-cr-00002-JPJ-PMS-1)

Submitted: October 23, 2017

Decided: October 27, 2017

Before TRAXLER, WYNN, and THACKER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Helen Eckert Phillips, PHILLIPS & THOMAS, PLLC, Abingdon, Virginia, for Appellant. Rick A. Mountcastle, Acting United States Attorney, Steven Randall Ramseyer, Assistant United States Attorney, Abingdon, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Victor Lebron pled guilty, pursuant to a plea agreement, to possession of a prohibited object in prison, in violation of 18 U.S.C. § 1791(a)(2), (d)(1)(B) (2012). The district court sentenced Lebron to 36 months' imprisonment, an upward variance from the 4- to 10-month Sentencing Guidelines range. On appeal, Lebron argues that the district court abused its discretion in imposing the variant sentence and asserts violations of the Fourth and Eighth Amendments. The Government has moved to dismiss the appeal as untimely and as barred by the terms of an appellate waiver contained in the plea agreement.

The plea agreement contained a waiver of Lebron's appellate rights; upon review, we conclude that Lebron knowingly and voluntarily executed the appellate waiver. *See United States v. Tate*, 845 F.3d 571, 574 n.1 (4th Cir. 2017) (providing standard). Furthermore, we conclude that the sentencing issue raised on appeal falls squarely within the scope of Lebron's waiver of appellate rights and that the alleged Fourth and Eighth Amendment violations are not contained within the narrow class of errors that automatically fall outside the scope of an appellate waiver. *See United States v. Archie*, 771 F.3d 217, 221-23 (4th Cir. 2014) (listing errors that automatically fall outside scope of appellate waiver).

Consequently, we grant the Government's motion to dismiss the appeal as barred by the appellate waiver in the plea agreement. We deny as moot the Government's motion to dismiss the appeal as untimely. We dispense with oral argument because the

facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED