

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

November 18, 2013

Lyle W. Cayce
Clerk

No. 12-51100

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff – Appellee

v.

MARTIN AMADO MEDELLIN,

Defendant – Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:10-CR-620-2

Before DAVIS, SOUTHWICK, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Martin Amado Medellin pleaded guilty, pursuant to a written plea agreement, to one count of possession with intent to distribute more than 100 kilograms of marijuana. The district court sentenced Medellin to 84 months in prison. On appeal, Medellin argues that in determining his sentence, the district court erred by failing to give him credit for accepting responsibility for his offense.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 12-51100

The Government has moved to dismiss the appeal based on the waiver-of-appeal provision in the plea agreement. In his written plea agreement, Medellin agreed to waive his right to appeal his conviction or sentence, although he reserved his right to appeal a sentence exceeding the statutory maximum and the right to raise claims based on prosecutorial misconduct or ineffective assistance of counsel. The issue raised by Medellin does not fall within the listed exceptions to the appeal waiver. Nothing in the record indicates that his waiver of appeal was not knowing and voluntary. *See United States v. McKinney*, 406 F.3d 744, 746–47 (5th Cir. 2005). Medellin does not oppose the Government’s argument that his appeal is barred by the waiver of appeal provision.

Thus, the Government’s motion for summary affirmance is GRANTED. *See United States v. Holy Land Found. for Relief & Dev.*, 445 F.3d 771, 781 (5th Cir. 2006). The Government’s alternative motion to extend the time to file its brief is DENIED.

AFFIRMED.