

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

February 27, 2023

Lyle W. Cayce
Clerk

No. 21-10658

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MICHAEL DWAYNE ALFRED,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:20-CR-48-1

Before RICHMAN, *Chief Judge*, and ELROD and OLDHAM, *Circuit Judges*.

PRISCILLA RICHMAN, *Chief Judge*:

Michael Dwayne Alfred pleaded guilty to one count of transportation of child sexual abuse material in violation of 18 U.S.C. § 2252A(a)(1). The district court sentenced Alfred to 240 months of imprisonment followed by lifetime supervision and ordered Alfred to pay a total of \$61,500 in restitution to seven victims depicted in Alfred's materials. On appeal, Alfred seeks to vacate the order of restitution, contending that it was imposed in violation of

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the proximate-cause requirements described in *Paroline v. United States*.¹ The Government moves to dismiss the appeal on the theory that it is waived by the appeal waiver in Alfred’s plea agreement. We grant the motion to dismiss.

I

In entering his guilty plea, Alfred accepted the accuracy of a factual resume prepared by the government. The resume stated that Alfred “knowingly transported” child sexual abuse material and that he “made available approximately 78 images and 916 videos . . . of suspected child pornography.”

Pursuant to his plea agreement, Alfred waived his rights to appeal his “conviction, sentence, fine and order of restitution or forfeiture in an amount to be determined by the district court.” He reserved the right to appeal, among other things, a “sentence exceeding the statutory maximum punishment.”

Prior to sentencing, the probation office prepared a presentence investigation report (PSR) detailing the conduct underlying Alfred’s offense and recommending terms for sentencing. It provided that “Alfred agreed to pay . . . any restitution arising from relevant conduct.” Initially, however, the PSR found restitution inapplicable because no victims had been identified. Alfred did not object to any provisions of the PSR regarding restitution. The third and fourth addenda to the PSR dealt exclusively with restitution. Together, these addenda addressed seven victims the National Center for Missing and Exploited Children identified as appearing in one of the “108 known series” possessed by Alfred. These victims’ impact

¹ 572 U.S. 434 (2014).

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statements were included in the addenda, and they requested restitution in varying amounts totaling \$61,500. Alfred did not file objections to the third and fourth addenda.

At sentencing, the district court accepted Alfred's guilty plea and "adopt[ed] the remaining findings and conclusions of the PSR and the addenda in their entirety." At this time, Alfred did raise objections to the restitution recommended by the PSR and ultimately ordered by the district court as part of Alfred's supervised release. Alfred argued that "when we look at the causal connection to these victims" he had "some responsibility," but it "would [not] be appropriate or substantively or procedurally reasonable to hit him with the full amount of restitution that these victims are requesting." The district court overruled these objections, referencing paragraphs of the PSR describing Alfred's "participat[ion] in live act distribution of child pornography that was over and above passive consumption." The court ordered Alfred to pay a total of \$61,500 in restitution to the seven identified victims.

Alfred now appeals the restitution order. He argues that the "district court erred because it did not conduct any proximate-cause analysis." The Government argues that the appeal waiver in Alfred's plea agreement forecloses this appeal.

II

We begin and end with waiver. Alfred argues that this appeal falls into the statutory-maximum exception recognized previously by this court.² In particular, Alfred argues that the district court imposed "an illegal sentence in excess of the statutory maximum" because it failed to conduct the proper

² See *United States v. Winchel*, 896 F.3d 387, 389 (5th Cir. 2018); *United States v. Leal*, 933 F.3d 426, 431 (5th Cir. 2019).

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proximate-cause analysis established by the Supreme Court in *Paroline v. United States*³ and codified at 18 U.S.C. § 2259(b)(2). Accordingly, Alfred argues that this appeal is not barred by the appeal waiver in his plea agreement. The Government argues that “Alfred’s claim amounts to nothing more than a factual dispute with the district court’s causation findings at sentencing.” Appeals as to factual disputes, the Government continues, were waived as part of the plea agreement.

We review de novo whether a waiver provision bars an appeal.⁴ We determine whether the waiver was knowing and voluntary and whether the waiver “applies to the circumstances at hand, based on the plain language of the agreement.”⁵ The record reflects, and Alfred does not argue otherwise, that Alfred’s waiver was knowing and voluntary. Accordingly, “we must determine whether the appeal waiver applies to the circumstances at hand.”⁶ In two recent cases, *United States v. Winchel*⁷ and *United States v. Leal*,⁸ we held that the appellants’ appeal waivers did not apply to *Paroline*-based challenges to their restitution orders because such appeals fall within the statutory-maximum exception.⁹

³ 572 U.S. 434 (2014).

⁴ *Leal*, 933 F.3d at 430 (citing *United States v. Keele*, 755 F.3d 752, 754 (5th Cir. 2014)).

⁵ *United States v. Purser*, 747 F.3d 284, 289 n.10 (5th Cir. 2014); see also *United States v. Bond*, 414 F.3d 542, 544 (5th Cir. 2005).

⁶ See *United States v. Kim*, 988 F.3d 803, 808 (5th Cir. 2021).

⁷ 896 F.3d 387 (5th Cir. 2018).

⁸ 933 F.3d 426 (5th Cir. 2019).

⁹ *Winchel*, 896 F.3d at 389 (“[I]f a court orders a defendant to pay restitution under § 2259 without determining that the defendant’s conduct proximately caused the victim’s claimed losses, the amount of restitution necessarily exceeds the statutory maximum.”); *Leal*, 933 F.3d at 430 (“[The defendant’s] ‘*Paroline*-based appeal of the district court’s

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Alfred argues that those cases control the outcome here, but his case presents different circumstances. Alfred objected to the district court's restitution order at the sentencing hearing, and the court explained its *Paroline* analysis. The district court then “use[d] . . . discretion and sound judgment”¹⁰ in fashioning a restitution order that it determined reflected Alfred's causal role in the victims' losses.¹¹ In *Winchel* and *Leal*, we declined to enforce the appeal waivers because the district courts failed to conduct the requisite analysis altogether.¹² Here, the district court conducted the analysis, and Alfred challenges the outcome of that analysis. Such a challenge is barred by his appeal waiver.

Because it is clear that the district court considered the *Paroline* factors at sentencing and ordered restitution as authorized by § 2259, the statutory-maximum exception does not apply. Nor did the district court merely rubber-stamp the conclusion. To the contrary, it gave meaningful consideration to whether the evidence showed that Alfred's conduct proximately caused the victims' loss. The appeal waiver in Alfred's plea agreement bars this appeal.

* * *

The motion to dismiss is GRANTED, and the appeal is DISMISSED.

restitution order' is, according to our precedent, an 'appeal of a sentence exceeding the statutory maximum punishment.'" (quoting *Winchel*, 896 F.3d at 389)).

¹⁰ See *Paroline v. United States*, 572 U.S. 434, 459 (2014).

¹¹ See 18 U.S.C. § 2259(b)(2)(B).

¹² *Winchel*, 896 F.3d at 390 (explaining that the district court entered the restitution order “without ensuring that the amount was authorized by statute”); *Leal*, 933 F.3d at 432 (5th Cir. 2019) (explaining that the appellant claimed the restitution request adopted by the district court “contained no true *Paroline* analysis”).