

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

September 12, 2018

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ROSENDO FLORES ANGULO,

Defendant - Appellant.

No. 18-2088
(D.C. No. 1:15-CR-03766-MV-1)
(D. N.M.)

ORDER AND JUDGMENT*

Before **TYMKOVICH**, Chief Judge, **McHUGH** and **MORITZ**, Circuit Judges.

This matter is before the court on the government’s motion to enforce the appeal waiver contained in defendant Rosendo Flores Angulo’s plea agreement. We grant the defendant’s counsel’s motion to withdraw, grant the government’s motion to enforce the defendant’s appeal waiver, and dismiss the appeal.

The defendant pleaded guilty pursuant to a plea agreement under Fed. R. Crim. P. 11(c)(1)(C) to one count of conspiracy to distribute heroin, in violation of 21 U.S.C. §§ 846 and 841(b)(1)(C). The statutory maximum penalty for this offense is 20 years’ (240 months’) imprisonment. *See id.* § 841(b)(1)(C). In the plea

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

agreement, the parties agreed that a sentence within the range of 168 to 210 months' imprisonment was appropriate in this case. The district court imposed a 210-month sentence. The plea agreement included the following waiver of Flores's appellate rights:

The Defendant is aware that 28 U.S.C. § 1291 and 18 U.S.C. § 3742 afford a defendant the right to appeal a conviction and the sentence imposed. Acknowledging that, the Defendant knowingly waives the right to appeal the Defendant's conviction(s) and any sentence, including any fine, at or under the maximum statutory penalty authorized by law.

Mot. to Enforce, Ex. 1 at 9.

The government filed a motion to enforce the plea agreement under United States v. Hahn, 359 F.3d 1315 (10th Cir. 2004) (en banc) (per curiam). In evaluating a motion to enforce an appeal waiver, 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.

The defendant's counsel responded to the government's motion. Citing Anders v. California, 386 U.S. 738, 744 (1967), counsel states that the defendant has no non-frivolous argument against enforcement of his appeal waiver. Counsel also requests permission to withdraw from representing the defendant pursuant to Anders, 386 U.S. at 744. We gave the defendant an opportunity to file a pro se response to the motion to enforce. See id. To date, he has not filed any response.

Under Anders, we have reviewed the motion and the record and we conclude that the defendant's appeal waiver is enforceable. Accordingly, we grant his

counsel's motion to withdraw, grant the government's motion to enforce the appeal waiver, and dismiss the appeal.

Entered for the Court
Per Curiam