

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

October 26, 2021

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

VICTOR ORDONEZ-CASTILLO,

Defendant - Appellant.

No. 21-2084
(D.C. No. 2:21-CR-00505-DN-1)
(D. N.M.)

ORDER AND JUDGMENT*

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

Victor Ordonez-Castillo pleaded guilty to reentry of a removed alien, in violation of 8 U.S.C. § 1326(a) and (b), pursuant to a “Fast Track” plea agreement under United States Sentencing Guideline § 5K3.1, which provided for a two-level departure from the otherwise applicable sentencing guideline range in exchange for a timely guilty plea. He was sentenced to 16 months’ imprisonment. Although his plea agreement contained a broad waiver of his appellate rights, he filed a notice of appeal. The government has moved to enforce the appeal waiver in the plea

* This panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel.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 pursuant to *United States v. Hahn*, 359 F.3d 1315 (10th Cir. 2004) (en banc) (per curiam).

Under *Hahn*, 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.

In response to the government’s motion, Mr. Ordonez-Castillo, through counsel, states that he “does not object to the granting of the government’s motion and the dismissal of this appeal.” Resp. at 1. Based on this concession and our independent review of the record, we grant the government’s motion to enforce the appeal waiver and dismiss the appeal. This dismissal does not affect Mr. Ordonez-Castillo’s right to pursue post-conviction relief on the grounds permitted in his plea agreement.

Entered for the Court
Per Curiam