

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

November 27, 2013

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MARK DAVID DAVIS,

Defendant-Appellant.

No. 13-3246
(D.C. No. 5:13-CR-40021-JAR-1)
(D. Kan.)

ORDER AND JUDGMENT*

Before **LUCERO, HARTZ, and PHILLIPS**, Circuit Judges.

After entering into a plea agreement that included a waiver of his right to appeal, Mark David Davis pleaded guilty to one count of failing to register as a sex offender, in violation of 18 U.S.C. § 2250(a). He was sentenced to 33 months of imprisonment (with nine months of that term to be served concurrently with an anticipated state sentence) and three years of supervised release. The sentence fell at

* This panel has determined that oral argument would not materially assist 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

the low end of the 33- to 41-month Guidelines range calculated by the district court, but it exceeded the sixteen-month sentence recommended by the parties.

Notwithstanding the appeal waiver, Mr. Davis appealed, seeking to challenge the procedural and substantive reasonableness of his sentence. The government has moved to enforce the waiver under *United States v. Hahn*, 359 F.3d 1315, 1325, 1328 (10th Cir. 2004) (en banc) (per curiam). In response, through counsel, Mr. Davis has conceded that each of the three factors set forth in *Hahn*, *id.* at 1325, is satisfied. And although we need not address a *Hahn* factor that the defendant does not contest, *see United States v. Porter*, 405 F.3d 1136, 1143 (10th Cir. 2005), our independent review confirms that all of the *Hahn* factors are satisfied.

The motion to enforce is granted and the appeal is dismissed.

Entered for the Court
Per Curiam