

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

January 6, 2015

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANTHONY RAY SACKETT,

Defendant - Appellant.

No. 14-6204
(D.C. No. 5:14-CR-00117-HE-1)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **KELLY**, **HARTZ**, and **McHUGH**, Circuit Judges.

After entering into a plea agreement that included a waiver of his right to appeal, Anthony Ray Sackett pleaded guilty to one count of producing child pornography in violation of 18 U.S.C. § 2251(a). He was sentenced to 480 months of imprisonment, within the applicable Sentencing Guidelines range. Mr. Sackett appealed, and the government has moved to enforce the appeal waiver under *United States v. Hahn*, 359 F.3d 1315, 1328 (10th Cir. 2004) (en banc) (per curiam).

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

Hahn sets forth three factors to evaluate an appeal waiver: “(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. Sackett, through counsel, has declined to dispute any of the *Hahn* factors and has conceded that this court should enforce the appeal waiver.

We need not address a *Hahn* factor that the defendant does not dispute. *See United States v. Porter*, 405 F.3d 1136, 1143 (10th Cir. 2005). In light of Mr. Sackett’s concession, the motion to enforce is granted and this appeal is dismissed.

Entered for the Court
Per Curiam