

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

November 6, 2015

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JULIAN GALLARDO-MEDINA,

Defendant - Appellant.

No. 15-1255
(D.C. No. 1:14-CR-00500-MSK-1)
(D. Colo.)

ORDER AND JUDGMENT*

Before **BRISCOE**, **LUCERO**, and **McHUGH**, Circuit Judges.

After entering into a plea agreement that included a waiver of his right to appeal, Julian Gallardo-Medina pleaded guilty to one count of illegal re-entry by a previously removed alien following a felony conviction, in violation of 8 U.S.C. § 1326(a) and (b)(1). After he was sentenced to 21 months of imprisonment, within the applicable Sentencing Guidelines range, he appealed. The government has

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

moved to enforce the appeal waiver under *United States v. Hahn*, 359 F.3d 1315, 1328 (10th Cir. 2004) (en banc) (per curiam).

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. Gallardo-Medina, 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. Gallardo-Medina’s concession, the motion to enforce is granted and this appeal is dismissed.

Entered for the Court
Per Curiam