

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

September 20, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RANDALL CROCKETT, a/k/a Chip,

Defendant - Appellant.

No. 21-6072
(D.C. No. 5:18-CR-00260-SLP-7)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **MATHESON, McHUGH, and MORITZ**, Circuit Judges.

After entering into a plea agreement that included a waiver of his right to appeal, Randall Crockett pleaded guilty to possession of 4,861 grams of methamphetamine in violation of 21 U.S.C. § 841(a)(1). The district court sentenced Crockett to 384 months in prison. Crockett has 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). We grant the government’s motion.

Crockett agreed to waive his right to appeal his plea, his sentence, “and the manner in which the sentence is determined,” provided the sentence was not above

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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 advisory guideline range. R. vol. I at 51-52. Crockett reserved the right to appeal the substantive reasonableness of his sentence if his sentence was above the advisory guideline range. *Id.* at 52. The parties stipulated that a sentence of 360 months “would be an appropriate disposition,” but Crockett acknowledged the sentencing court “is not bound by, nor obligated to accept” any such stipulations, and that his waiver is fully enforceable even if the sentencing court rejected the 360-month stipulation. *See id.* at 50, 52. Although the advisory sentence under the Sentencing Guidelines was life in prison, the district court sentenced Clark to 384 months.

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.” 359 F.3d at 1325. Crockett does not dispute that his appeal falls within the scope of his waiver and that he waived his rights knowingly and voluntarily. He contends, however, that enforcing his waiver would result in a miscarriage of justice.

To show that enforcing a waiver will result in a miscarriage of justice, a defendant must show: (1) the district court relied on an impermissible factor such as race; (2) counsel provided ineffective assistance in negotiating the waiver, rendering it invalid; (3) the sentence exceeded the statutory maximum; or (4) the waiver is otherwise unlawful. *See id.* at 1327. The entirety of Crockett’s argument is that the waiver is otherwise unlawful because the 384-month sentence is “excessive and fails to fulfill the purposes of punishment [set] forth in 18 U.S.C. § 3553(a).” Resp. at 3.

We disagree. The sentence was well within the advisory guideline range. Although the sentence exceeded the 360 months to which the parties stipulated, Crockett acknowledged the district court was not bound by the parties' stipulation. We hold that Crockett has not carried his burden of showing that enforcing his waiver will result in a miscarriage of justice.

The government's motion to enforce the appellate waiver is granted and this appeal is dismissed.

Entered for the Court
Per Curiam