

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

January 5, 2022

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BRITTNEY JO WALLACE,

Defendant - Appellant.

No. 21-5068
(D.C. No. 4:21-CR-00045-CVE-1)
(N.D. Okla.)

ORDER AND JUDGMENT*

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

This matter is before the court on the government’s motion to enforce the appeal waiver in Brittney Jo Wallace’s plea agreement pursuant to *United States v. Hahn*, 359 F.3d 1315 (10th Cir. 2004) (en banc) (per curiam). Exercising jurisdiction under 28 U.S.C. § 1291, we grant the motion and dismiss the appeal.

Wallace pleaded guilty to production of child pornography by a parent. As part of her plea agreement, she waived her right to appeal her conviction and sentence unless the sentence exceeded the statutory maximum. Both by signing the written plea agreement and in her responses to the court’s questions at the change of

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

plea hearing, Wallace acknowledged that she was entering her plea knowingly and voluntarily and that she understood its consequences, including the possible sentence and the appeal waiver. The court accepted her plea as having been knowingly and voluntarily entered and sentenced her to 300 months in prison. Despite receiving a sentence below the statutory maximum, Wallace filed a notice of appeal.

In ruling on a motion to enforce, we consider whether the appeal falls within the scope of the waiver, whether the waiver was knowing and voluntary, and whether enforcing it would result in a miscarriage of justice. *Hahn*, 359 F.3d at 1325.

In response to the government's motion to enforce, Wallace, through counsel, acknowledged that her appeal waiver is enforceable under the standards set out in *Hahn*. Accordingly, we grant the government's motion to enforce the appeal waiver and dismiss the appeal. *See United States v. Porter*, 405 F.3d 1136, 1143 (10th Cir. 2005) (noting that court need not address uncontested *Hahn* factor).

Entered for the Court
Per Curiam