

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

May 26, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MICHAEL EUGENE SPEARS,

Defendant - Appellant.

No. 23-5016
(D.C. No. 4:20-CR-00296-GKF-1)
(N.D. Okla.)

ORDER AND JUDGMENT*

Before **PHILLIPS, McHUGH**, and **CARSON**, Circuit Judges.

Michael Eugene Spears pleaded guilty to second-degree murder in Indian Country in violation of 18 U.S.C. §§ 1151, 1153, and 1111. He was sentenced to 300 months’ imprisonment. Although his plea agreement contained a waiver of his appellate rights, he filed a notice of appeal. The government has moved to enforce the appeal waiver in the plea agreement pursuant to *United States v. Hahn*, 359 F.3d 1315 (10th Cir. 2004) (en banc) (per curiam).

Under *Hahn*, we consider “(1) whether the disputed appeal falls within the scope of the waiver of appellate rights; (2) whether the defendant knowingly and

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

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. Spears, through counsel, states (1) he “is unable to identify an appellate issue that falls outside the scope of the waiver,” Resp. at 9; (2) he “is unable to dispute the government’s contention that the appellate waiver is knowing and voluntary,” *id.* at 11; and (3) “nothing in the record suggests that enforcing the waiver would be a miscarriage of justice,” *id.* at 12. Therefore, counsel concedes there is no “viable, non-frivolous reason to argue that the appeal waiver is unenforceable.” *Id.*

Based on this concession, we grant the government’s motion to enforce the appeal waiver and dismiss the appeal.

Entered for the Court
Per Curiam