

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

September 29, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BRIAN KEITH MANUEL,

Defendant - Appellant.

No. 23-6046
(D.C. No. 5:21-CR-00227-SLP-1)
(W.D. Okla.)

ORDER AND JUDGMENT*

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

This matter is before the court on the government’s motion to enforce the appeal waiver contained in Defendant Brian Keith Manuel’s plea agreement. Mr. Manuel pleaded guilty to possessing a firearm after a felony conviction in violation of 18 U.S.C. § 922(g)(1). Pursuant to the plea agreement, he waived his right to appeal his conviction or his sentence, provided his sentence was within the advisory sentencing guideline range determined by the district court to apply. The district court sentenced Mr. Manuel to 65 months’ imprisonment—12 months below the advisory guideline range of 77 months to 96 months. Nevertheless, Mr. Manuel filed a notice of appeal.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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 government filed a motion to enforce the plea agreement pursuant to *United States v. Hahn*, 359 F.3d 1315 (10th Cir. 2004) (en banc) (per curiam). In response, Mr. Manuel's counsel stated that there are no non-frivolous arguments that can be presented in response to the motion to enforce, citing *Anders v. California*, 386 U.S. 738, 744 (1967), and requesting permission to withdraw as counsel. This court gave Mr. Manuel an opportunity to file a pro se response to the motion to enforce. *See id.* To date, he has not filed a response to the motion to enforce.

Under *Anders*, we have reviewed the motion and the record, and we conclude that Mr. Manuel's proposed appeal falls within the scope of the appeal waiver, that he knowingly and voluntarily waived his appellate rights, and that enforcing the waiver would not result in a miscarriage of justice. *See Hahn*, 359 F.3d at 1325 (describing the factors this court considers when determining whether to enforce a waiver of appellate rights). Accordingly, we grant the motion to enforce the appeal waiver, grant counsel's motion to withdraw, and dismiss the appeal.

Entered for the Court
Per Curiam