

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 7, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

HAILEE ANNE HELTON,

Defendant - Appellant.

No. 26-1072
(D.C. No. 1:23-CR-00371-CNS-2)
(D. Colo.)

ORDER AND JUDGMENT*

Before **HOLMES**, Chief Judge, **PHILLIPS** and **McHUGH**, Circuit Judges.

This matter is before the court on the government's motion to enforce the appeal waiver contained in Defendant Hailee Helton's plea agreement. Ms. Helton pleaded guilty to conspiracy to distribute, and possession with intent to distribute, fentanyl. Pursuant to her plea agreement, she waived her right to appeal her conviction and sentence. The district court sentenced Ms. Helton to 168 months in prison. Ms. Helton filed a notice of appeal, and the government now moves to enforce the appeal waiver. *See United States v. Hahn*, 359 F.3d 1315, 1328 (10th Cir. 2004) (en banc) (per curiam).

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

In response, Ms. Helton's counsel, citing *Anders v. California*, 386 U.S. 738, 744 (1967), stated that there are no non-frivolous arguments that can be presented in response to the government's motion to enforce and requested permission to withdraw as counsel. This court then gave Ms. Helton an opportunity to file a pro se response to the motion to enforce. *See id.* To date, she has not done so.

Under *Anders*, we have reviewed the motion and the record, and we conclude that Ms. Helton's proposed appeal falls within the scope of the appeal waiver, that she knowingly and voluntarily waived her 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).

Although the *Anders* brief indicates that Ms. Helton believes she received ineffective assistance of counsel, "a defendant must generally raise claims of ineffective assistance of counsel in a collateral proceeding, not on direct review." *United States v. Porter*, 405 F.3d 1136, 1144 (10th Cir. 2005). "This rule applies even where a defendant seeks to invalidate an appellate waiver based on ineffective assistance of counsel." *Id.* Thus, if Ms. Helton wishes to assert an ineffective-assistance-of-counsel claim, she may do so in a collateral proceeding. *See* Mot. to Enforce, Attach. 1 at 3 (waiving the right to collaterally attack the conviction and sentence except for, among other things, ineffective assistance of counsel claims).

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