FILED
United States Court of Appeals
Tenth Circuit

October 26, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ROBERT ROBERTS,

Defendant - Appellant.

No. 26-3072
(D.C. No. 6:24-CR-10064-JWB-1)
(D. Kan.)

ORDER AND JUDGMENT*

Before **HOLMES**, Chief Judge, **HARTZ** and **ROSSMAN**, Circuit Judges.

Pursuant to a plea agreement, Defendant Robert Roberts pleaded guilty to one count of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). He was sentenced to 42 months in prison. After he filed this appeal, the government moved to enforce an appeal waiver contained in the plea agreement. *See United States v. Hahn*, 359 F.3d 1315, 1328 (10th Cir. 2004) (en banc) (per curiam).

I. Background

At the time of the indictment, Mr. Roberts was in state custody on state charges. The government therefore obtained a writ of habeas corpus

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

ad prosequendum to secure his appearance in the federal case. *See United States v. Ray*, 899 F.3d 852, 858 n.2 (10th Cir. 2018) ("A writ of habeas corpus *ad prosequendum* is an order issued by a federal district court requiring the state to produce a state prisoner for trial on federal criminal charges."). Pursuant to the writ, Mr. Roberts was held in federal custody for 21 months prior to his sentencing.

The parties entered a plea agreement under Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure. That rule permits parties to agree that a specific sentencing range is appropriate, and that range becomes binding on the district court once it accepts the plea agreement. In Mr. Roberts's case, the parties agreed on a sentencing range of 37 to 46 months in prison.

The plea agreement contained an appeal waiver stating that Mr. Roberts "knowingly and voluntarily waives any right to appeal or collaterally attack any matter in connection with," among other things, "the components of the sentence to be imposed herein." R. vol. I at 74. One of the exceptions to this waiver was if the Court imposed a sentence "in excess of the sentence recommended by the parties under Rule 11(c)(1)(C)." *Id.* at 75.

Mr. Roberts also acknowledged in the plea agreement that he had read the agreement, understood it, "and agree[d] that it is true and accurate and not the result of any threats, duress or coercion." *Id.* at 76. Similarly, at the change-of-plea hearing, the court confirmed that Mr. Roberts had read (or had read to him) every word of the plea agreement, that he had entered his guilty plea freely and voluntarily, and that the decision to plead guilty was his alone. The court also confirmed with

Mr. Roberts that he understood he was giving up his right to challenge the sentence by direct appeal or in collateral proceedings.

At the sentencing hearing, the parties appeared to agree that the sentence should run concurrent to any sentence Mr. Roberts received in connection with the pending state charges. His counsel also argued that under § 5G1.3 of the Sentencing Guidelines, the sentence should be adjusted to reflect the time Mr. Roberts spent in federal custody. Counsel argued that since the Bureau of Prisons would not credit the time in custody pursuant to the writ (because Mr. Roberts technically remained in primary custody of the state), a § 5G1.3 adjustment was required "to make the sentence truly concurrent." R. vol. 3 at 48.

The district court sentenced Mr. Roberts to 42 months in prison. Although it ordered the sentence to run concurrent with any sentence received in connection with the state charges, the court declined to make the adjustment to Mr. Roberts's sentence under § 5G1.3. This appeal followed.

II. Discussion

In evaluating a motion to enforce an appeal waiver, we consider: "(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." *Hahn*, 359 F.3d at 1325. Mr. Roberts opposes the government's motion principally based on the first factor, but he also invokes the third factor.

Mr. Roberts argues that the sentence falls outside the scope of the waiver because it was "in substance" greater than the sentence the parties recommended, Resp. at 2, and therefore falls within the exception to the appeal waiver. In other words, he contends that because the district court did not credit him with the 21 months he had already been in federal custody, the sentence was "in excess of the sentence recommended by the parties under Rule 11(c)(1)(C)," R. vol. 1 at 75. We reject this argument.

In effect, Mr. Roberts's argument amounts to the assertion that the range recommended by the parties was actually 16 to 25 months, not the 37 to 46 months plainly specified in the plea agreement. There is nothing in the plea agreement to support that assertion. The plea agreement says nothing about Mr. Roberts receiving credit for the 21 months he'd been in federal custody. Even if the parties' discussion at the sentencing hearing evinced a new understanding of the phrase "in excess of the sentence recommended by the parties," *id.*, the plea agreement contains an integration clause, which states "unless subsequently supplemented *in writing* with the joint approval of the parties, this Plea Agreement embodies each and every term of the agreement between the parties," *id.* at 76 (emphasis added). Such a clause prohibits any oral modification of the plea agreement. *See United States v. Montano*, 472 F.3d 1202, 1204 (10th Cir. 2007) ("[An] oral alteration of a portion of a plea agreement during sentencing does not replace a written provision in the agreement").

Mr. Roberts argues that he nevertheless "reasonably understood" that the recommended sentencing range in the plea agreement required that he receive credit for the 21 months. Resp. at 8. He says this understanding is demonstrated by the

sentencing memorandum he filed with the district court prior to sentencing. But that memorandum requested "that the Court impose a sentence of 37 months—*the low end of the 11(c)(1)(C) plea agreement range*—and follow the joint recommendation for concurrent sentencing, adjusting the sentence to credit Mr. Roberts for the 21 months, 15 days he has served on a writ from state court." R. vol. 1 at 97 (emphasis added). The memorandum thus demonstrates Mr. Roberts's understanding that the "plea agreement range" was 37 to 46 months. *See also* R. vol. 3 at 48 (joining the government's recommendation that the court accept the 37- to 46-month range but arguing "he should also get an adjustment"). Nothing in the record supports Mr. Roberts's assertion that he understood the failure to credit him 21 months would render the sentence "in excess of the sentence recommended by the parties under Rule 11(c)(1)(C)," R. vol. 1 at 75.

Mr. Roberts also contends that enforcing the plea agreement would result in a miscarriage of justice.[1] This court has held that a miscarriage of justice occurs when, among other things, "the waiver is otherwise unlawful." *Hahn*, 359 F.3d at 1327. Mr. Roberts argues the waiver is otherwise unlawful because "to enforce this waiver . . . would enforce it beyond its own terms" and "strip [him] of the benefit of his

[1] The Supreme Court recently issued a decision that "approve[d] the majority view among the courts of appeal that an appeal waiver is unenforceable when it would result in a miscarriage of justice," and provided additional guidance for what constitutes a miscarriage of justice in the context of appeal waivers. *Hunter v. United States*, 608 U.S. 713, 727–28 (2026). Because Mr. Roberts relied solely on *Hahn* in arguing that the miscarriage-of-justice exception applies, we need not address *Hunter*.

bargain." Resp. at 15. This is merely a restatement of his first argument, which we have rejected—the plea agreement plainly states that Mr. Roberts bargained for a sentencing range of 37 to 46 months, and he received a sentence within that range. Mr. Roberts also asserts the waiver is "otherwise unlawful" based on his claim that the district court erred in failing to adjust his sentence under § 5G1.3. But we "look[] to whether the *waiver* is otherwise unlawful, not to whether another aspect of the proceeding may have involved legal error." *United States v. Smith*, 500 F.3d 1206, 1213 (10th Cir. 2007) (citation and internal quotation marks omitted).

In short, the 42-month sentence Mr. Roberts received was within the scope of the waiver, and the waiver is not otherwise unlawful within the meaning of our case law.

III. Conclusion

We grant the government's motion to enforce the appeal waiver and dismiss this appeal.

Entered for the Court

Per Curiam