

UNITED STATES COURT OF APPEALS **July 14, 2009**

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

RUBEN SERRATO,

Defendant-Appellant.

No. 09-4054

(D.C. No. 2:06-CR-00851-TS-1)

(D. Utah)

ORDER AND JUDGMENT*

Before **TACHA, TYMKOVICH, and HOLMES**, Circuit Judges.

This matter is before the court on the government's motion to enforce the appeal waiver contained in defendant's plea agreement. The motion is filed pursuant to *United States v. Hahn*, 359 F.3d 1315 (10th Cir. 2004) (en banc) (per curiam). In response, defendant, through counsel, states that summary disposition of the direct appeal is appropriate. Resp. at 2, 7. Defendant does not

* This panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

concede that he knowingly and voluntarily waived his appellate rights, or that enforcing the waiver would not result in a miscarriage of justice. *Id.* at 2-6; *see Hahn*, 359 F.3d at 1325 (identifying factors used to determine if appeal waiver is valid). Rather, he contends these issues, and any potential ineffective-assistance-of-counsel claims, would be better addressed in a collateral proceeding. Resp. at 2-7.

Accordingly, the government's motion is GRANTED, and the appeal is DISMISSED.

ENTERED FOR THE COURT
PER CURIAM