

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

August 4, 2021

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EUSEBIO SALOMON-SILLAS,
a/k/a Fernando Solis,

Defendant - Appellant.

No. 21-1131
(D.C. No. 1:20-CR-00014-CMA-2)
(D. Colo.)

ORDER AND JUDGMENT*

Before **HOLMES, BACHARACH, and EID**, Circuit Judges.

Following his acceptance of a plea agreement that included a waiver of his right to appeal, Eusebio Salomon-Sillas pleaded guilty to conspiracy to distribute or possess with intent to distribute one kilogram and more of a mixture and substance containing a detectable amount of heroin, a Schedule I controlled substance, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(i), and 846. He was sentenced to 120 months' imprisonment. Despite his waiver, Salomon-Sillas appealed. The government has moved to enforce Salomon-Sillas's 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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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 evaluating a motion to enforce a 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.” *Id.* at 1325. Salomon-Sillas’s counsel has filed a response, stating that he “finds no basis that the Government’s motion to enforce Appellant’s waiver of his appellate rights set forth in his plea agreement and reaffirmed during the plea colloquy before the district court should not be granted.” *Aplt. Resp.* at 19. Counsel further stated that his “discussion with his client . . . raised no issue that would justify arguing his appeal.” *Id.*

Our independent review confirms that Salomon-Sillas’s appeal waiver is enforceable. Salomon-Sillas has identified no issues he wishes to raise on appeal that fall outside the scope of the appeal waiver. The plea agreement clearly sets forth the appeal waiver and states that it was knowing and voluntary, and the district court confirmed Salomon-Sillas’s understanding of his appeal waiver during his change of plea hearing. Moreover, we see no evidence contradicting Salomon-Sillas’s knowing and voluntary acceptance of the appeal waiver. Finally, there is no indication that enforcing the waiver would result in a miscarriage of justice as defined in *Hahn*, 359 F.3d at 1327.

For the foregoing reasons, we grant the government’s motion to enforce the appeal waiver and dismiss the appeal.

Entered for the Court
Per Curiam