

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

September 24, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RAMON UZIEL HERNANDEZ-PEREZ,
a/k/a Uziel P. Hernandez, a/k/a Uziel
Pizzaro, a/k/a Uziel Pizarro Corral,

Defendant - Appellant.

No. 21-1092
(D.C. No. 1:19-CR-00524-DDD-1)
(D. Colo.)

ORDER AND JUDGMENT*

Before **HARTZ, PHILLIPS**, and **EID**, Circuit Judges.

Following his acceptance of a plea agreement that included a waiver of his right to appeal, Ramon Uziel Hernandez-Perez pleaded guilty to the following: two counts of Hobbs Act robbery, in violation of 18 U.S.C. § 1951(a); one count of brandishing a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A)(ii); and one count of possession of a firearm and ammunition by a prohibited person, in violation of 18 U.S.C. § 922(g)(5). He was sentenced to 144 months in prison. Despite his waiver, Hernandez-Perez appealed. The government has moved to enforce the 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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

waiver. *See United States v. Hahn*, 359 F.3d 1315, 1328 (10th Cir. 2004) (en banc) (per curiam).

Hernandez-Perez's counsel has filed a supplemental response to the government's motion, stating that Hernandez-Perez "concedes that the government's Motion should be granted." Supp. Resp. at 1. Our independent review confirms that Hernandez-Perez's appeal waiver is enforceable. 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.

Hernandez-Perez has identified no issues 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 Hernandez-Perez's understanding of his appeal waiver during his change of plea hearing. Moreover, we see nothing in the record contradicting Hernandez-Perez'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