

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

November 9, 2021

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LUIS EDUARDO BARRIOS-LUNA,
a/k/a Lalo,

Defendant - Appellant.

No. 21-1016
(D.C. No. 1:17-CR-00396-WJM-1)
(D. Colo.)

ORDER AND JUDGMENT*

Before **HARTZ, KELLY, and HOLMES**, Circuit Judges.

Luis Eduardo Barrios-Luna pled guilty to conspiracy to distribute methamphetamine and possession of a firearm in furtherance of a drug trafficking crime, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), 846, and 18 U.S.C. § 924(c)(1)(A)(i). The district court sentenced him to 228 months' imprisonment. Although his plea agreement contained a waiver of his appellate rights, he filed a notice of appeal. The government moved to enforce the appeal waiver under *United States v. Hahn*, 359 F.3d 1315 (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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

Under *Hahn*, 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.

Counsel for Mr. Barrios-Luna filed a response to the government’s motion stating she had “reviewed the appellate record and researched whether Mr. Barrios-Luna’s waiver of his appellate rights is enforceable under *Hahn*,” Resp. at 5, and had concluded “no non-frivolous grounds exist to contest the enforceability of the waiver,” *id.* at 6. Counsel therefore requested permission to withdraw, citing *Anders v. California*, 386 U.S. 738 (1967). Because counsel indicated that Mr. Barrios-Luna “wishes to oppose the government’s motion to enforce,” Resp. at 1, and asked that he be allowed “to submit his own response,” *id.* at 2, we invited him to do so. The deadline for his response has passed, and we have not received a response from Mr. Barrios-Luna.

Based on counsel’s concession and our independent review of the record, we grant the government’s motion to enforce the appeal waiver, grant counsel’s motion to withdraw, and dismiss the appeal.

Entered for the Court
Per Curiam