

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

September 25, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ALEXIS NICOLE WILKINS,

Defendant - Appellant.

No. 23-1173
(D.C. No. 1:22-CR-00101-CMA-1)
(D. Colo.)

ORDER AND JUDGMENT*

Before **PHILLIPS, MORITZ, and CARSON**, Circuit Judges.

This matter is before the court on the government's motion to enforce the appeal waiver in Alexis Nicole Wilkins's plea agreement pursuant to *United States v. Hahn*, 359 F.3d 1315 (10th Cir. 2004) (en banc) (per curiam). Exercising jurisdiction under 28 U.S.C. § 1291, we grant the motion and dismiss the appeal.

Ms. Wilkins pleaded guilty to distribution of a mixture or substance containing a detectable amount of fentanyl, a Schedule II controlled substance, resulting in death. As part of her plea agreement, she waived her right to appeal her conviction and sentence, unless the government appealed the sentence or the sentence imposed

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

exceeded either the statutory maximum or the guidelines range for a total offense level of 35.

The district court sentenced Ms. Wilkins to 240 months' imprisonment. The sentence is below the statutory maximum of life imprisonment, *see* 21 U.S.C. § 841(b)(1)(C), and is at the bottom of the guidelines range for her offense level. The government did not appeal the sentence. Despite the fact none of the exceptions to the appeal waiver applied, Ms. Wilkins filed a notice of appeal.

In ruling on a motion to enforce, we consider whether the appeal falls within the scope of the appeal waiver, whether the defendant knowingly and voluntarily waived her right to appeal, and “whether enforcing the waiver would result in a miscarriage of justice.” *Hahn*, 359 F.3d at 1325.

In response to the government's motion to enforce, Ms. Wilkins, through counsel, indicated that she does not object to dismissal of her appeal pursuant to *Hahn*. By doing so, she conceded that her waiver was knowing and voluntary, that her appeal falls within the scope of the waiver, and that enforcement of the waiver would not result in a miscarriage of justice. *See United States v. Porter*, 405 F.3d 1136, 1143 (10th Cir. 2005) (court need not address uncontested *Hahn* factors).

Accordingly, we grant the government's motion to enforce the appeal waiver and dismiss the appeal.

Entered for the Court
Per Curiam