

**FILED**

**United States Court of Appeals  
Tenth Circuit**

**UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

**September 5, 2023**

**Christopher M. Wolpert  
Clerk of Court**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RODNEY JOE SMITH,

Defendant - Appellant.

No. 23-5060  
(D.C. No. 4:22-CR-00387-JFH-1)  
(N.D. Okla.)

**ORDER AND JUDGMENT\***

Before **BACHARACH, KELLY, and McHUGH**, Circuit Judges.

Following his acceptance of a plea agreement that included a waiver of his right to appeal, Rodney Joe Smith pleaded guilty to stalking in violation of 18 U.S.C. § 2261A(2)(B), and evidence tampering in violation of 18 U.S.C. § 1512(c)(1). He was sentenced to 18 months in prison. Despite his waiver, Mr. Smith filed an appeal. The government has moved to enforce the appeal waiver. *See United States v. Hahn*, 359 F.3d 1315, 1328 (10th Cir. 2004) (en banc) (per curiam). Mr. Smith’s counsel has filed a response conceding the enforceability of the waiver.

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

Our independent review confirms that Mr. Smith’s appeal waiver is enforceable. In evaluating a motion to enforce an appellate 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.

We find that the record satisfies each of these factors. First, the plea agreement stated that Mr. Smith waived his right to appeal any aspect of his conviction and sentence, unless his sentence exceeded the statutory maximum. The district court sentenced Mr. Smith to a term of imprisonment below the statutory maximum, and his appeal therefore falls within the scope of the waiver. Second, the plea agreement clearly sets forth the appeal waiver and states that it was knowing and voluntary, and the district court confirmed Mr. Smith’s understanding of his appeal waiver during his change of plea hearing. We see no evidence contradicting Mr. Smith’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.

The motion to enforce is granted and this matter is dismissed.

Entered for the Court  
Per Curiam