

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

October 17, 2023

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DUSTIN KENNETH STROM,

Defendant - Appellant.

No. 23-3078
(D.C. No. 6:21-CR-10068-JWB-1)
(D. Kan.)

ORDER AND JUDGMENT*

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

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

Mr. Strom pleaded guilty to two counts of conspiracy to commit sexual exploitation of a child (production of child pornography), in violation of 18 U.S.C. § 2251(a). As part of his plea agreement, he waived his right to appeal “any matter in connection with. . . his conviction[] or the components of [his] sentence, including

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

the length and conditions of supervised release,” unless the court departed upwards from the Guideline range or the government appealed the sentence. Mot. to Enforce, Attach. A at 7.

The district court sentenced Mr. Strom to 720 months’ imprisonment—the statutory maximum of 360 months for each count, *see* 18 U.S.C. § 2251(e), to be served consecutively, and a 15-year term of supervised release. The court also imposed a special assessment against Mr. Strom and entered a joint-and-several restitution order totaling about \$457,000 against him and his co-defendants, which included an amount for the victims’ projected future psychological therapy costs. The sentence is within the guidelines range determined by the court and the government did not appeal the sentence.

Despite the fact none of the exceptions to the appeal waiver applied, Mr. Strom filed a notice of appeal indicating that he “could challenge the procedural or substantive reasonableness of the prison sentence, the term of supervised release, the conditions of supervised release, the restitution order, or the special assessment.” Docketing Statement at 5.

In ruling on a motion to enforce an appeal waiver, we ordinarily consider whether the defendant’s appeal falls within the scope of the appeal waiver, whether he knowingly and voluntarily waived his right to appeal, and “whether enforcing the waiver would result in a miscarriage of justice.” *Hahn*, 359 F.3d at 1325. But in response to the government’s motion to enforce, Mr. Strom, through counsel, indicated that he does not object to dismissal of his appeal pursuant to *Hahn*, *United*

States v. Anthony, 25 F.4th 792, 796 (10th Cir. 2022) (holding that restitution is a component of a criminal sentence), and *United States v. Everman*, No. 23-3069, 2023 WL 4855152, at *1, *4 (10th Cir. July 31, 2023) (enforcing the identical appeal waiver in one of Mr. Strom’s co-defendants’ plea agreement, concluding that the waiver covered his challenge to the portion of the restitution order for a victim’s projected future therapy costs). Thus, we need not address the *Hahn* factors here. See *United States v. Porter*, 405 F.3d 1136, 1143 (10th Cir. 2005) (court need not address uncontested *Hahn* factors).

We grant the government’s motion to enforce the appeal waiver and dismiss Mr. Strom’s appeal.

Entered for the Court
Per Curiam