

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

August 24, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ADRIAN LASEAN FOSTER,

Defendant - Appellant.

No. 26-5047
(D.C. No. 4:25-CR-00076-JFH-1)
(N.D. Okla.)

ORDER AND JUDGMENT*

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

Adrian Lasean Foster pleaded guilty pursuant to a plea agreement to one count of Malicious Mischief in Indian Country. The district court varied upward and sentenced him to 36 months in prison. Foster seeks to appeal his sentence. The government has moved to enforce the appeal waiver in Foster's plea agreement and dismiss this appeal. For the reasons that follow, we grant the motion.

In response to the government's motion, Foster concedes that his appeal waiver is enforceable under this court's decision in *United States v. Hahn*, 359 F.3d 1315 (10th Cir. 2004). He explains that his appeal is within the scope of his waiver,

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

his waiver was knowing and voluntary, and enforcing the waiver would not result in a miscarriage of justice under the standard articulated in *Hahn*. He argues, however, that his appeal waiver is unenforceable under the miscarriage-of-justice standard articulated in the Supreme Court’s recent decision in *Hunter v. United States*, 146 S. Ct. 1702 (2026).

The government contends that “even if *Hunter* broadens the miscarriage-of-justice exception, the ‘standard-fare error’ Foster asserts does not render his appeal waiver unenforceable.” Reply at 8 (emphasis omitted). We agree.

In *Hunter*, the Supreme Court resolved a circuit split over the enforceability of appeal waivers in the sentencing context. 146 S. Ct. at 1709. The Court “approv[ed] the majority view among the courts of appeals,” including our court, “that an appeal waiver is unenforceable when it would result in a miscarriage of justice.” *Id.* at 1713; *see also id.* at 1709 & n.1 (listing courts that had held “a waiver cannot be enforced if doing so would result in a miscarriage of justice”).

In the Court’s view, “[t]he nature of the miscarriage-of-justice limit precludes any attempt to list all the situations in which it will overcome an appeal waiver” because “[e]xtreme cases . . . are hard to anticipate before they happen.” *Id.* at 1714. But the Court did give some general guidance, which we recently described:

The Court said that the miscarriage-of-justice standard when “properly understood and applied, sets a high bar.” [*Hunter*, 146 S. Ct.] at 1713. For instance, an appeal waiver may be set aside under the standard “only if the sentence is marred by the kind of egregious error that would bring the judicial system into disrepute. The error must be obvious—not one a judge could reasonably make. And it must be of the type that would undermine public confidence in the judiciary” and “discredit the judiciary’s commitment to the

law.” *Id.* “The point of the miscarriage-of-justice limit . . . is to offer a safety valve for extreme cases—a way out of a waiver when the justice system’s basic integrity is at stake.” *Id.* at 1713-14.

United States v. Salgueido, No. 25-2088, --- F.4th ---, 2026 WL 2221619, at *4 (10th Cir. Aug. 3, 2026).

The Court also gave “a few examples of the kinds of errors . . . that would bring the judiciary into disrepute” to “provide guidance to lower courts.” *Hunter*, 146 S. Ct. at 1714. Those examples are: (1) “a sentence exceeding what the relevant statute allows—most commonly, a term of years above the maximum prescribed”; (2) “a sentence that is infected with a blatant constitutional error, such as when a judge takes account of a constitutionally impermissible factor (like race) or imposes a constitutionally infirm condition of supervised release (like barring a defendant from becoming pregnant)”; and (3) a sentence “imposed without some minimum of civilized procedure as in . . . one in which the judge refused to hold a hearing consonant with basic principles of law.” *Id.* (internal quotation marks omitted). The Court explained that these examples are not “exclusive,” but “serve to illustrate the high bar a defendant must surmount to overcome an appeal waiver.” *Id.* And it emphasized that “standard-fare errors in misapplying sentencing law cannot cancel an appeal waiver.” *Id.* at 1713.

Foster argues that the district court’s upward variance resulted from a sentencing “error that is both obvious and corrosive of public trust,” Resp. at 6, because the court relied on an unsupported factual finding “that skewed the court’s consideration of the sentencing factors in 18 U.S.C. § 3553(a) and yielded an

arbitrary sentence,” *id.* at 7-8. Even if we assume, without deciding, that *Hunter* made the miscarriage-of-justice exception broader than our articulation of the exception in *Hahn*, we agree with the government that Foster’s appeal presents a standard-fare sentencing error that cannot cancel an appeal waiver.

Hunter emphasized that “a waiver may be set aside only if the sentence is marred by the kind of egregious error that would bring the judicial system into disrepute.” 146 S. Ct. at 1713. An allegedly erroneous factual finding—which was only one of the reasons the court gave for its decision to vary upward—is not the kind of egregious error that would bring the judicial system into disrepute. We therefore conclude that enforcing Foster’s appeal waiver will not result in a miscarriage of justice.¹

¹ Other courts have rejected similar arguments that certain sentencing errors justified a miscarriage-of-justice exception to an appeal waiver under *Hunter*. See, e.g., *United States v. Murry*, No. 25-1410, --- F.4th ---, 2026 WL 2331472, at *1-2 (8th Cir. Aug. 12, 2026) (enforcing appeal waiver for argument that the court erred in varying upward because it placed too much weight on defendant’s criminal history); *United States v. Merrival*, 182 F.4th 725, 727-28 (8th Cir. 2026) (enforcing appeal waiver for arguments that the district court erred in calculating the sentencing guidelines range and that the sentence was substantively unreasonable); *United States v. Kersey*, No. 25-14446, 2026 WL 2255267, at *2 (11th Cir. Aug. 5, 2026) (enforcing appeal waiver for argument that there was an unwarranted sentencing disparity between defendant and his co-defendant); *United States v. Celaya*, No. 24-6562, 2026 WL 2057415, at *1 (9th Cir. July 16, 2026) (enforcing appeal waiver for argument that the district court erred in overruling defendant’s objections to the sentencing guidelines calculation). In contrast, the Fifth Circuit declined to enforce an appeal waiver for an argument that the restitution ordered exceeded the statutory maximum, which was an example in *Hunter* of the type of sentencing error that would support a miscarriage-of-justice exception. See *United States v. Brann*, No. 24-50378, --- F. 4th ---, 2026 WL 2333927, at *6 (5th Cir. Aug. 12, 2026).

We grant the government's motion and dismiss this appeal.

Entered for the Court

Per Curiam