

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 1, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TYLER DEWAYNE ROGERS,

Defendant - Appellant.

No. 26-5063
(D.C. No. 4:23-CR-00331-JDR-3)
(N.D. Okla.)

ORDER AND JUDGMENT*

Before **McHUGH**, **CARSON**, and **FEDERICO**, Circuit Judges.

Pursuant to a plea agreement, Tyler Dewayne Rogers pleaded guilty to one count of conspiracy to commit wire fraud and was sentenced to 51 months in prison. He then filed this appeal. His plea agreement contains an appeal waiver that the government now moves to enforce. *See United States v. Hahn*, 359 F.3d 1315, 1328 (10th Cir. 2004) (en banc) (per curiam). For the reasons set forth below, we grant the government's motion and dismiss Mr. Rogers's appeal.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

I. Background

The plea agreement provided that Mr. Rogers “knowingly and voluntarily” waived his right to a direct appeal of his conviction and sentence, unless the sentence exceeded the statutory maximum of 20 years. Mot. to Enforce, Attach. 1 at 3. He also waived the right to collaterally attack the conviction and sentence under 28 U.S.C. §§ 2241 or 2255, “except for claims of ineffective assistance of counsel.” *Id.* Mr. Rogers signed his name immediately below the waiver provisions, and elsewhere in the plea agreement he acknowledged having read and voluntarily agreed to every aspect of the plea agreement. Similarly, at the change-of-plea hearing, Mr. Rogers told the court that he had read the plea agreement word-for-word, understood the waiver provisions, and had discussed with his counsel the advantages and disadvantages of pleading guilty.

Mr. Rogers failed to attend the sentencing hearing, but he later appeared before the court at a rescheduled sentencing hearing with new counsel. Although the presentence report calculated a recommended guideline range of 70 to 87 months in prison, the district court varied downward three levels and sentenced Mr. Rogers to 51 months. This appeal followed.

II. Discussion

In evaluating a motion to enforce an appeal 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.” *Hahn*, 359 F.3d at 1325.

Mr. Rogers concedes that his appeal is within the scope of the waiver, but he contends he did not knowingly and voluntarily waive his appellate rights and that enforcing the waiver would constitute a miscarriage of justice. We disagree.

A. Knowing and Voluntary Waiver

“When determining whether a waiver of appellate rights is knowing and voluntary, we especially look to two factors.” *Id.* “First, we examine whether the language of the plea agreement states that the defendant entered the agreement knowingly and voluntarily.” *Id.* In this case, the waiver provisions are preceded by a statement that Mr. Rogers “knowingly and voluntarily agrees to the following terms.” *Mot. to Enforce*, Attach. 1 at 3. The waiver provisions are then immediately followed by a statement that Mr. Rogers “expressly acknowledges that counsel has explained his appellate and post-conviction rights; that [he] understands his rights; and that [he] knowingly and voluntarily waives those rights.” *Id.*

“Second, we look for an adequate Federal Rule of Criminal Procedure 11 colloquy.” *Hahn*, 359 F.3d at 1325. The transcript of the change-of-plea hearing reflects that the district court confirmed with Mr. Rogers in open court that he understood his appellate and post-conviction rights, that he was agreeing to waive those rights, and that he did so knowingly and voluntarily. *See Mot. to Enforce*, Attach. 4 at 26 (“THE COURT: Is your plea of guilty and the waiver of your rights made voluntarily and completely of your own free choice? THE DEFENDANT: Yes, Your Honor.”).

Mr. Rogers nevertheless contends that his waiver was not knowing and voluntary because his counsel provided ineffective assistance by (1) failing to communicate to him that the government had extended a “Rule 11/reverse-proffer opportunity to Mr. Rogers,” Resp. at 9, and (2) failing to provide evidence of Mr. Rogers’s medical condition to substantiate his reasons for missing the originally scheduled sentencing hearing. He does not explain how these alleged failures render his waiver unknowing or involuntary. And, in any event, “a defendant must generally raise claims of ineffective assistance of counsel in a collateral proceeding, not on direct review.” *United States v. Porter*, 405 F.3d 1136, 1144 (10th Cir. 2005). “This rule applies even where a defendant seeks to invalidate an appellate waiver based on ineffective assistance of counsel.” *Id.* Thus, if Mr. Rogers wishes to assert an ineffective-assistance-of-counsel claim, he may do so in a collateral proceeding. *See* Mot. to Enforce, Attach. 1 at 3 (waiving the right to collaterally attack the conviction and sentence “except for claims of ineffective assistance of counsel”).

B. Miscarriage of Justice

In *Hahn*, we listed several situations that could constitute a miscarriage of justice sufficient to overcome an appellate waiver, including “where ineffective assistance of counsel in connection with the negotiation of the waiver renders the waiver invalid.” 359 F.3d at 1327 (internal quotation marks omitted). Mr. Rogers argues his counsel’s alleged failure to communicate to him “a known, formal government offer is ineffective assistance ‘in connection with the negotiation of the

waiver’ itself, since the waiver was negotiated and executed as part of the very plea that this omission tainted.” Resp. at 13 (quoting *Hahn*, 359 F.3d at 1327).

We decline to reach the merits of this challenge. Mr. Rogers has provided no information regarding the substance of the offer he alleges his counsel failed to communicate. And contrary to his assertion that the offer was “likely more favorable,” Resp. at 10, the government informed the district court that the plea agreement represented “the government’s best offer,” Mot. to Enforce, Attach. 4 at 3. Resolving these issues requires evidentiary development for which collateral proceedings are better suited. See *United States v. Wells*, 873 F.3d 1241, 1271 (10th Cir. 2017) (“Because of the typical necessity of developing a separate factual record pertinent to an ineffective-assistance claim, we have held that [such] claims should be brought in collateral proceedings, not on direct appeal.” (internal quotation marks omitted)).

Mr. Rogers also argues that enforcing the appellate waiver would be a miscarriage of justice because he received a harsher sentence than his co-defendants, including the ringleader of the conspiracy. Even assuming this could constitute a miscarriage of justice, the district court explained that Mr. Rogers had “a lengthy history of pretrial noncompliance,” Mot. to Enforce, Attach. 5 at 41, which included a DUI arrest, a positive drug test, absconding from pretrial supervision, and failure to appear at his originally scheduled sentencing hearing. Mr. Rogers has not addressed whether the ringleader’s pretrial conduct was remotely similar to his own.

In short, we reject Mr. Rogers's contention that enforcement of the appellate waiver would result in a miscarriage of justice.

III. Conclusion

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

Entered for the Court

Per Curiam