IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-60156
Summary Calendar

D.C. Docket No. 3:18-CR-143-1

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

ADAN REYES-MARTINEZ,

Defendant - Appellant

Appeal from the United States District Court for the
Southern District of Mississippi

Before HIGGINBOTHAM, HO, and ENGELHARDT, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the appeal is dismissed.

Certified as a true copy and issued as the mandate on Oct 29, 2019

Attest: Lyle W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

APPENDIX 2

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-60156
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
October 7, 2019
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ADAN REYES-MARTINEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:18-CR-143-1

Before HIGGINBOTHAM, HO, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

Pursuant to a written plea agreement, Adan Reyes-Martinez pleaded guilty to failure to depart the United States, in violation of 8 U.S.C. § 1253(a)(1), and he was sentenced above the advisory guidelines range to 48 months of imprisonment. Reyes-Martinez waived his right to appeal, but he reserved the right to appeal a claim of ineffective assistance of counsel. On appeal, Reyes-Martinez argues that his above-guidelines sentence was

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

substantively unreasonable. In lieu of filing a brief, the Government filed a motion for summary dismissal, seeking enforcement of the appeal waiver.

A defendant may waive the statutory right to appeal in a valid plea agreement. *United States v. McKinney*, 406 F.3d 744, 746 (5th Cir. 2005). "This court reviews de novo whether an appeal waiver bars an appeal." *United States v. Keele*, 755 F.3d 752, 754 (5th Cir. 2014). In so doing, "we conduct a two-step inquiry: (1) whether the waiver was knowing and voluntary and (2) whether the waiver applies to the circumstances at hand, based on the plain language of the agreement." *United States v. Bond*, 414 F.3d 542, 544 (5th Cir. 2005). In this case, the record demonstrates that Reyes-Martinez knowingly and voluntarily waived his right to appeal, and the appellate waiver applies in this circumstance. *See McKinney*, 406 F.3d at 746; *United States v. Portillo*, 18 F.3d 290, 292 (5th Cir. 1994); *United States v. Melancon*, 972 F.2d 566, 567-68 (5th Cir. 1992).

Accordingly, the Government's motion for summary dismissal is GRANTED, and the appeal is DISMISSED.