NO:_____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2019

RONALD DAMON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

APPENDIX

933 F.3d 269
United States Court of Appeals, Third Circuit.

UNITED STATES of America
v.
Ronald DAMON, Appellant

No. 18-2444
|
Argued June 5, 2019
|
(Filed: August 6, 2019)

Synopsis
Background: Following his release from prison, defendant filed application for early termination of his term of supervised release. The United States District Court for the District of New Jersey, No. 3-06-cr-00471-001, Freda L. Wolfson, J., denied application, and defendant appealed.

[Holding:] The Court of Appeals, Matey, Circuit Judge, held that appellate waiver in defendant's plea agreement barred appeal.

Affirmed.

West Headnotes (4)

[1] **Criminal Law**
Issues considered

Appellate waiver in plea agreement only bars appeal that falls inside its scope.

2 Cases that cite this headnote

[2] **Criminal Law**
Plea of Guilty or Nolo Contendere
Criminal Law
Issues considered

Court will enforce appellate waiver in plea agreement and decline to review merits of defendant's appeal only if it concludes (1) that issues defendant pursues on appeal fall within scope of his appellate waiver and (2) that he knowingly and voluntarily agreed to appellate waiver, unless (3) enforcing waiver would work miscarriage of justice.

2 Cases that cite this headnote

[3] **Criminal Law**
Representations, promises, or coercion; plea bargaining

Because court applies rules of contract interpretation to plea agreements, first step in interpreting plea agreement's terms is to decide whether it is ambiguous or unambiguous; contract is ambiguous if it is capable of more than one reasonable interpretation.

[4] **Criminal Law**
Issues considered

Plea agreement's appellate waiver, which prohibited appeals challenging sentence imposed if that sentence fell within or below Guidelines range, barred defendant's appeal of denial of application for early termination of his term of supervised release, despite defendant's contention that his application was not challenge to his sentence, but motion filed in separate chronological phase and in different proceeding; plea agreement contemplated that "sentence" would include term of supervised release, and application was "challenge" to original sentence. 18 U.S.C.A. § 3583(a).

1 Cases that cite this headnote

***270** On Appeal from the United States District Court for the District of New Jersey (D.C. No. 3-06-cr-00471-001), District Judge: Hon. Freda L. Wolfson

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Before: JORDAN, BIBAS, and MATEY, Circuit Judges.

OPINION

MATEY, Circuit Judge.

Ronald Damon signed a plea agreement with the United States accepting responsibility for a federal crime. He served time in custody and left prison. Now, having reentered society, he wants a fresh start, free from further oversight by the federal government. So Damon asked to end his term of supervised release a few years early. He offered facts and circumstances justifying his request, and highlighted the hardships imposed by restrictions on his activities. But Damon's present desires are controlled by a past decision: his contract with the government containing the terms and conditions of his guilty plea. Because his plea agreement precludes challenges to his sentence, and because any shortening of his supervision would amount to a change in his sentence, we will affirm the decision of the District Court.

I. The Proceedings Before the District Court

A. The Written Plea Agreement

The facts are not in dispute. Damon pleaded guilty to knowingly and intentionally distributing and possessing with intent to distribute 50 grams or more of crack cocaine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A) (as amended in 2006) and 18 U.S.C. § 2. As is customary in federal criminal practice, the Government and Damon memorialized their agreement in writing. The plea agreement includes a provision stating that both parties "waive ***271** certain rights to file an appeal, collateral attack, writ or motion after sentencing, including, but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255." (App. at 22.) Schedule A to the plea agreement provides:

> Ronald Damon knows that he has and, except as noted below in this paragraph, voluntarily waives, the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255, which challenges the sentence imposed by the sentencing court if that sentence falls within or below the Guidelines range that results from the agreed total Guidelines offense level of 33.

(*Id.* at 26.) The agreement also states that, "in addition to imposing any other penalty on Ronald Damon, the sentencing judge ... pursuant to 21 U.S.C. § 841, must require Ronald Damon to serve a term of supervised release of at least 5 years, which will begin at the expiration of any term of imprisonment imposed." (*Id.* at 21.)

Both Damon and the Government executed the plea agreement. Following Federal Rule of Criminal Procedure 11(b)(1), the District Judge explained the agreement, including the maximum penalties, fines, and period of supervised release. And as required by Federal Rule of Criminal Procedure 11(b)(1)(N), the District Court asked Damon whether he understood that he was "giving up [his] right to file an appeal or otherwise attack the sentence that may be imposed in this matter" and Damon agreed. (*Id.* at 42–43.) A portion of their exchange is illustrative:

The Court: Do you understand that by the terms of the

plea agreement both you and the government have given up the right to file an appeal or post-conviction relief under certain circumstances that are set forth in the plea agreement itself and in Schedule A to the plea agreement? I referred you to those provisions before. Do you understand that?

The Defendant: Yes.

The Court: Did you discuss with your attorney this waiver of appeal and waiver of your right to file for post-conviction relief?

The Defendant: Yes.

The Court: And are you satisfied with the explanations that your attorney provided?

The Defendant: Yes.

The Court: And do you agree with those waivers of appeal and waiver of your right to file for post-conviction relief?

The Defendant: Yes.

(App. at 56–57.) The District Court found that the plea was "knowingly and voluntarily made" and accepted the plea. (*Id.* at 58–59.)

B. Damon is Sentenced According to the Plea

Having pleaded guilty, Damon faced 262–327 months' imprisonment under the advisory Sentencing Guidelines. Upholding its end of the deal, the Government filed a motion for a downward departure under U.S.S.G. § 5K1.1, which the Court weighed favorably in sentencing Damon to 144 months' imprisonment. The District Court also imposed the required five-year term of supervised release, a $2,000 fine, and a special assessment of $100.

C. Damon Asks for an Early End to Supervised Release

After serving his prison term and about thirty-two months of his sixty-month term of supervised release, Damon sought to terminate the remainder of his supervision. The District Court found that the waiver provision of the plea agreement barred ***272** Damon's request, and denied his application. Damon timely appealed.[1]

[1] The District Court had subject matter jurisdiction over Damon's motion under 18 U.S.C. § 3231 and we have appellate jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a). We exercise plenary review to decide whether a defendant's appeal falls within the scope of a waiver provision in a plea agreement. *United States v. Goodson*, 544 F.3d 529, 537, n.6 (3d Cir. 2008).

II. The Plain Language of the Agreement Controls

On appeal, Damon acknowledges the waiver, but argues that it doesn't extend to his application. The Government disagrees and has moved for summary action to enforce the terms of the waiver and to dismiss this appeal, or alternatively, to affirm the District Court's order.

A. Waiving the Right to Appeal

[1] [2]The parties' dispute is narrow. Damon agrees that his plea was both knowing and voluntary, eliminating constitutional concerns. And he does not dispute that his plea agreement contains a waiver, so "we must decide whether the appellate waiver before us bars this appeal." *United States v. Wilson*, 707 F.3d 412, 414 (3d Cir. 2013). Waivers in plea agreements are neither new nor unusual, and we have long enforced their terms. *See United States v. Khattak*, 273 F.3d 557, 562 (3d Cir. 2001). But a waiver only bars an appeal that falls inside its scope. *Garza v. Idaho*, —— U.S. ——, 139 S. Ct. 738, 744, 203 L.Ed.2d 77 (2019). We will enforce an appellate waiver in a plea agreement and decline to review the merits of Damon's appeal only "if we conclude (1) that the issues [Damon] pursues on appeal fall within the scope of his appellate waiver and (2) that he knowingly and voluntarily agreed to the appellate waiver, unless (3) enforcing the waiver would work a miscarriage of justice." *United States v. Corso*, 549 F.3d 921, 927 (3d Cir. 2008). Damon aims his arguments at the first step in this test and we use familiar principles of interpretation to review.

B. Damon Identifies no Ambiguity in the Agreement

We begin by noting what Damon does not argue. Damon states that the plea agreement bars a direct appeal of his sentence. And he maintains that the "waiver bars an appeal of any component of punishment imposed at the original sentencing proceeding, including the terms and conditions of supervised release." (Opening Br. at 9.) Instead, he reasons that his present motion for early termination of his supervised release falls outside the waiver on temporal and factual grounds, labeling it as a motion for post-sentencing relief. In other words, Damon does not see a textual hook in the plea agreement that would allow for a reduced term of supervised release as part of his bargain. Rather, he sees an opening in the logic behind the text, arguing that the agreement should best be construed to allow a fresh examination of his progress based on the most recent information.

[3]Our task is one of interpretation, "guided by the 'well-established principle that plea agreements, although arising in the criminal context, are analyzed under contract law standards.' " *Corso*, 549 F.3d at 927 (quoting *Goodson*, 544 F.3d at 535 n.3) (internal quotation marks omitted). Thus, "we begin our analysis as we would with any contract," by "examin[ing] first the text of the contract." *United States v. Gebbie*, 294 F.3d 540, 545 (3d Cir. 2002). "Because we apply rules of contract interpretation to plea agreements, the first step is to decide whether the plea agreement is ***273** ambiguous or unambiguous. A contract is ambiguous if it is capable of more than one reasonable interpretation." *Id*. at 551 (internal quotation marks omitted).

In the agreement, Damon waived the right to file "any appeal ... which challenges the sentence imposed by the sentencing court if that sentence falls within or below the Guidelines range that results from the agreed total Guidelines offense level of 33." (App. at 26.) Damon's sentence fell within this Guidelines range. So the waiver governs if the "sentence imposed" on Damon includes the term of his supervised release and if this appeal "challenges" that sentence. (*Id.*)

1. The Term "Sentence" in Damon's Plea Agreement Refers to All Penalties

[4]We focus not on intent, but on words, as "the language of a waiver, like the language of a contract, matters greatly." *Goodson*, 544 F.3d at 535. And the word "sentence" is commonly understood to encompasses all penalties imposed on a defendant, which can include penalties beyond imprisonment. *See* THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1302, 1597 (5th ed. 2018) (defining "sentence" as "[t]he penalty imposed by a law court or other authority upon someone found guilty of a crime or other offense" and defining "penalty" as "[a] punishment imposed for a violation of law."); WEBSTER'S NEW WORLD COLLEGE DICTIONARY 1180, 1323 (5th ed. 2018) (defining "sentence" as "a decision or judgment, as of a court; esp., the determination by a court of the punishment of a convicted person" or "punishment itself" and defining "punishment" as "a penalty imposed on an offender for a crime or wrongdoing"); BLACK'S LAW DICTIONARY 1428, 1569 (10th ed. 2014) (defining "sentence" as "[t]he judgment that a court formally pronounces after finding a criminal defendant guilty; the punishment imposed on a criminal wrongdoer" and defining "punishment" as "[a] sanction — such as a fine, penalty, confinement, or loss of property, right, or privilege — assessed against a person who has violated the law."). The ordinary meaning of "sentence" can only reasonably be read to include all forms of punishment or penalties imposed on a defendant. By extension, Damon's "sentence" must be read to include the term of his supervised release, bringing Damon's challenge within the scope of the bargained-for waiver.

The structure of the plea agreement confirms this common understanding of "sentence." Under the heading "Sentencing," the plea agreement provides that the sentencing judge will impose penalties that include, at a minimum: (1) imprisonment; (2) a fine; (3) forfeiture; and (4) a term of supervised release. (App. 20–21.) The plea agreement also made clear that "pursuant to 21 U.S.C. § 841," the sentencing judge "must require Ronald Damon to serve a term of supervised release of at least 5 years, which will begin at the expiration of any term of imprisonment imposed." (*Id*. at 21.) Section 841(b)(1)(A), in turn, states that "any sentence under this subparagraph shall ... impose a term of supervised release of at least 5 years in addition to such term of imprisonment." Construing the language of the plea agreement in a "manner that gives meaning to each provision," as we must, the term "sentence" unambiguously includes the imposition of a term of supervised release. *United States v. Floyd*, 428 F.3d 513, 516 (3d Cir. 2005).

Reading "sentence" to include a term of supervised release also agrees with our prior holdings. In

we held that the defendant's appellate waiver "encompassed his right to appeal the conditions of his supervised release." 544 F.3d at 538. Construing the appellate waiver presented, we rejected the defendant's contention "that the waiver's use of the term 'sentence' ***274** should be construed to mean only the term of incarceration" and held that "the duration, as well as the conditions of supervised release are components of a sentence." *Id.* at 537–38. "Under chapter 227 of the Federal Crimes Code, the period of incarceration is but one component of a sentence. Other components may be probation under § 3561, supervised release under § 3583, a fine under § 3571, and/or restitution under § 3556." *Id.* at 537. Indeed, Section 3583(a) provides that a court "may include as a *part* of the sentence a requirement that the defendant be placed on a term of supervised release after imprisonment." *Id.* (quoting 18 U.S.C. § 3583(a)) (emphasis in original). Thus, we concluded that "the text of the waiver ... establishes that the term 'sentence' as used in [defendant's] appellate waiver applies to not only the period of incarceration that will be imposed, but also any other component of punishment." *Id.* at 538; *see also United States v. Island*, 916 F.3d 249, 252 (3d Cir. 2019) ("[T]he supervised release term constitutes part of the original sentence") (internal quotations omitted); *Wilson*, 707 F.3d at 414 ("the word 'sentence' in a broad appellate waiver ... includes the terms and conditions of supervised release and, therefore, bars appeals challenging those terms and conditions."). The "sentence imposed" on Damon likewise encompassed the duration of his supervised release.[2]

[2] Our reading of the "sentence imposed" on Damon also tracks the Supreme Court's understanding that supervised release is just one component of a sentence. *See United States v. Haymond*, —— U.S. ——, 139 S. Ct. 2369, 2379, 204 L.Ed.2d 897 (2019) (plurality opinion) ("[a]n accused's final sentence includes any supervised release sentence he may receive[.]"); *Mont v. United States*, —— U.S. ——, 139 S. Ct. 1826, 1834, 204 L.Ed.2d 94 (2019) ("Supervised release is a form of punishment that Congress prescribes along with a term of imprisonment as part of the same sentence.").

2. Damon's Waiver Bars "Challenges" to the Term of his Supervised Release

In the agreement, Damon waived the right to file any motion or appeal that "challenges the sentence imposed." (App. at 26.) Damon seeks to evade this language by arguing that his motion is not a challenge to his sentence, but a motion filed in a separate chronological phase and in a different proceeding. But this argument is unsupported by the text of the plea agreement and by any sound understanding of what is included in a sentence. Supervised release is, as just explained, part of the sentence that Damon received.

The verb "challenges" in the legal context is generally understood to mean "to dispute or call into question." BLACK'S LAW DICTIONARY 279 (10th ed. 2014); *see also* THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 307 (5th ed. 2018) (defining "challenge" as a "formal objection" or a legal action "testing the validity of an action, particularly by the government."); WEBSTER'S NEW WORLD COLLEGE DICTIONARY 248 (5th ed. 2018) (defining "challenge" as "a calling into question; a demanding of proof [or] explanation."). Damon's motion does just that, questioning his original sentence by seeking to shorten the term of his supervised release. By its very nature, it is a challenge to the sentence imposed.

Although this Court has not addressed the term "challenges" in the context of a motion to terminate supervised release brought under § 3583(e)(1), the Sixth Circuit decision in *United States v. Scallon*, 683 F.3d 680 (5th Cir. 2012) is instructive. There, the Sixth Circuit held that "[t]he sorts of challenges [defendant] brought in his § 3583(e)(2) motion could have been raised on direct appeal or as part of a ***275** collateral attack, and [defendant] unequivocally waived both of those options in his written plea agreement." *Scallon*, 683 F.3d at 683–84. The Sixth Circuit therefore held that "a defendant's appeal from the denial of his § 3583(e)(2) motion falls within the scope of a broadly-worded appeal waiver like [the defendant's]." *Id.* at 684. Likewise, the "Sentencing" portion of Damon's plea agreement noted the requirement that he serve "a term of supervised release of at least 5 years." (App. at 21.) He cannot now challenge the term of his supervised release by reframing it as a post-sentence modification.

C. Damon is Bound by His Bargain with the Government

As with any contract, Damon and the Government are held to the negotiated terms of their agreement. To interpret the waiver as Damon urges would stretch its ordinary meaning beyond normal usage. So "we have no

difficulty in holding a defendant to the plea agreement [when] he seeks the benefits of it without the burdens." *United States v. Williams*, 510 F.3d 416, 422 (3d Cir. 2007) (internal quotations and alterations omitted). Thus, "we must construe the phrase 'any appeal ... which challenges the sentence imposed' to mean what it plainly states" *United States v. Banks*, 743 F.3d 56, 59 (3d Cir. 2014), and hold that Damon's challenge to the duration of his supervised release falls within the scope of his appellate waiver.

Damon knowingly and voluntarily entered into a plea agreement with the government that provided him with certain undeniable benefits, most notably the Government's motion for a downward departure from the Sentencing Guidelines. Damon was sentenced to 144 months imprisonment, far lower than the 262 to 327 months of imprisonment he faced under the Guidelines. In return, the Government bargained for and received a guilty plea and waiver of "the right to file any appeal, any collateral attack, or any other writ or motion ... which challenges the sentence imposed by the sentencing court." (App. at 26.) We find no issue that presents a miscarriage of justice. As we have cautioned, a contrary conclusion "would permit an end run around the waiver." *Wilson*, 707 F.3d at 415, n.2 (distinguishing between a defendant's ability to appeal a later-imposed sentence modification sought by the government from an appeal brought by the defendant to modify the terms of supervised release imposed as part of the original sentence).[3] So we will affirm the decision of the District Court and grant the Government's motion to the extent the District Court's order is affirmed.

[3] The Government also raises an important point: it is unclear that any reduction of supervised release would be appropriate because 18 U.S.C. § 841(b)(1)(A) imposes a mandatory minimum term of supervision. But we do not reach this issue. *See United States v. Gwinnett*, 483 F.3d 200, 206 (3d Cir. 2007).

All Citations

933 F.3d 269

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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No. 18-2444

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UNITED STATES OF AMERICA

v.

RONALD DAMON,
Appellant

_____

On Appeal from the United States District Court
for the District of New Jersey
(D.C. No. 3-06-cr-00471-001)
District Judge: Hon. Freda L. Wolfson

_____

SUR PETITION FOR REHEARING

_____

BEFORE: SMITH, *Chief Judge*, and MCKEE, AMBRO, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, Jr., KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, and PHIPPS, *Circuit Judges*

_____

The petition for rehearing filed by appellant, Ronald Damon, in the above-captioned matter having been submitted to the judges who participated in the decision of this Court and to all other available circuit judges of the Court in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the Court in regular active service who are not disqualified not

having voted for rehearing by the Court en banc, the petition for rehearing by the panel and the Court en banc is DENIED.

BY THE COURT,

s/ Paul B. Matey
Circuit Judge

Dated: September 5, 2019
Lmr/cc: Mark E. Coyne
John F. Romano
Julie A. McGrain

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

(609) 989-2182

CHAMBERS OF
FREDA L. WOLFSON
UNITED STATES DISTRICT JUDGE

Clarkson S. Fisher Federal Building
& U.S. Courthouse
402 East State Street
Trenton, New Jersey 08608

LETTER ORDER

June 22, 2018

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RE: *United States v. Ronald Damon*
Criminal No.: 06-471 (FLW)

Counsel:

Defendant Ronald Damon ("Defendant") has moved for early termination of his term of supervised release pursuant to 18 U.S.C. § 3583(e)(1). For the reasons that follow, that request is denied. On June 26, 2006, Defendant pled guilty to one count of knowingly and intentionally distributing and possessing with intent to distribute a Schedule II narcotics drug controlled substance, cocaine base, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A) and 18 U.S.C. § 2. Plea Agreement 06/26/2006 at 3. A plea agreement, signed by Defendant on June 26, 2006, contains the following waiver: "Ronald Damon knows that he has and . . . voluntarily waives, the right to file an appeal, any collateral attack, or any other writ or motion, *including, but not limited to* an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255 . . . ." *Id.* at 7 (emphasis

added). On October 17, 2006, this Court sentenced Defendant to 144 months imprisonment and 60 months of supervised release in connection with his guilty plea.[1] *See* Judgement dated October 17, 2006. In doing so, I substantially departed from the Guidelines' range of 262 to 327 months because, in part, the Government filed a motion for downward departure pursuant to U.S.S.G. § 5K1.1.

Defendant's term of imprisonment expired on May 22, 2015, and he subsequently began his 60-month term of supervised release. After 32 months of his 60-month supervised release, Defendant moves for early termination under 18 U.S.C. § 3583(e)(1). The Government has opposed Defendant's motion.

I note at the outset that Defendant has complied with the terms of his supervision. Indeed, he has not engaged in new criminal conduct, has remained law-abiding, and has not tested positive for illegal substances. *Id.* In addition, he has maintained a solid relationship with his family, as well as a stable residence, and been gainfully employed as a warehouse worker for UPS during the supervision period. *Id.* at 5. Based on his good behavior, Defendant is currently being subjected to the lowest level of supervision provided by the Probation Office.[2] *Id.* Defendant argues that early termination would allow him and his wife to explore higher paying employment opportunities in other locations that have lower costs of living. *Id.* In opposition, the Government argues that Defendant's filing of a motion for termination of supervised release is barred by his plea agreement, and even if not barred, the motion still fails to satisfy the criteria for early termination. *See* 18 U.S.C. § 3553(a).

[1] This sentence was imposed pursuant to the Sentencing Reform Act of 1984. 18 U.S.C. § 3582(c).
[2] The Probation Office takes no position regarding Defendant's Motion for Early Termination of Supervised release.

The parties dispute whether the waiver provision in Defendant's plea agreement precludes Defendant from filing a motion for early termination.[3] The Government argues that under *U.S. v. Laine*, 404 F. App'x 571, 573 (3d Cir. 2010), Defendant has waived his right to seek early termination in his plea agreement.[4] The Government maintains that pursuant to *Laine*, when a defendant waives his right to challenge any component of his sentence, the defendant also waives his right to request early termination of supervised release under § 3583(e)(1).

In response, Defendant argues that the waiver provision did not specifically preclude the right to request early termination under § 3583(e)(1), and this "deficiency in the agreement should be construed 'against the government as [the] drafter." Defendant's Response to Government's Opposition, p. 1. Additionally, Defendant argues that not only is *Laine* non-precedential, but it also involves legally distinguishable issues, and therefore the Court should decline to follow *Laine*. *See id.* I do not agree.

In *Laine*, the defendant signed a plea agreement stating that he would not appeal or present any collateral challenge to his conviction or sentence. *Laine*, 404 F. App'x at 571. The plea agreement in *Laine* was similar to the one executed by Defendant here, as it listed a few specific motions that were waived and also included catch-all language. *Id.* Similar to this case, the district court in *Laine* downwardly departed from the Guidelines range when imposing Laine's sentence.[5] *Id.* at 572. After serving two years of his three-year supervised release term,

[3] The parties do not dispute the enforceability of the waiver in the plea agreement. That being said, I find the waiver is enforceable because: (1) it was entered into knowingly and voluntarily and (2) the enforcement of the waiver does not result in a miscarriage of justice. *U.S. v. Khattak*, 273 F.3d 557, 562-63 (3d Cir. 2001).

[4] "Ronald Damon waive[s] certain rights to file an appeal, collateral attack, writ or motion after sentencing, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255." Plea Agreement 06/26/2006 at 3.

[5] The *Laine* court downwardly departed from Guideline range of 41-51 months imprisonment and issued a sentence of 24 months imprisonment with three years of supervised release. *Laine*,

Laine filed a motion to terminate under § 3583(e). *Id.* Laine argued that because he complied with the terms of his supervised release and wished to relocate in order to perform missionary work in the western states, early termination was appropriate. *Id.* The district court denied the motion. *Id*

On appeal, the Third Circuit held that the waiver in the plea agreement precluded Laine from seeking early termination of his supervised release. *Id.* at 573. In doing so, the court found that because "the *duration*, as well as the conditions of supervised release are component of a sentence," Laine had waived his right to challenge both imprisonment and the term of supervised release. *See id* (quoting *U.S. v. Goodson*, 544 F.3d 529, 538 (3d Cir. 2008)).[6]

Here, Defendant signed an almost identical plea agreement as in *Laine*. *See* Plea Agreement dated June 26, 2006; *see also Laine*, 404 F. App'x at 571. The plea agreement stated: "Ronald Damon waive[s] certain rights to file an appeal, collateral attack, writ or motion after sentencing, *including but not limited to* an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255." *Id.* at p. 3 (emphasis added). The catch-all language signified that Defendant waived the right to *all* motions challenging his sentence, including the term of supervised release. Therefore, Defendant's argument that the plea agreement did not specifically bar § 3583(e) motions has no merit.

404 F. App'x at 572.

[6] The *Goodson* ruling was crucial to the decision in *Laine*. *See Laine*, 404 F. App'x at 573 (quoting *Goodson*, 544 F.3d at 538). The court in *Goodson* was presented with a defendant who plead guilty pursuant to a plea agreement that contained a waiver of his right to file an appeal under specific statutes. *Goodson*, 544 F.3d at 531. Defendant then raised an appeal on grounds not specifically noted in the plea agreement, arguing that supervised release was not among the conditions included in the word "sentence". *Id.* at 533, 537. In holding that the word "sentence" in the plea agreement referes "not only to the period of incarceration . . . but also any other component of punishment," the Court found that Defendant's right to appeal under § 3742 was waived. *Id.* at 538.

Next, Defendant argues that this Court should not follow *Laine* because it is non-precedential and there is a difference between challenging one's sentence and seeking early termination of supervised release. However, the distinction raised by Defendant was expressly rejected by the Third Circuit in *Laine*. *Laine*, 404 F. App'x at 573. While *Laine* may not be precedential, it is a Third Circuit decision on an identical legal issue with nearly identical facts. *Laine*, 404 F. App'x at 573. As such, I find its reasoning highly persuasive and follow it here. For these reasons, the Court disagrees with Defendant's position, and finds that he has waived his right to seek early termination of his supervised release.

Regardless of waiver, Defendant's Motion for Termination of Supervised Release fails on the merits. Motions to amend or modify the conditions of supervised release are governed by 18 U.S.C. § 3583(e), which allows the sentencing court to terminate supervised release "at any time after the expiration of one year of supervised release," if, after considering the factors set forth in 18 U.S.C. § 3553(a), the court "is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice." 18 U.S.C. § 3583(e)(1); *see United States v. Abuhouran*, 398 F. App'x 712, 714-15 (3d Cir. 2010) (observing that, in determining whether to terminate supervised release term prior to its completion, "Section 3583(e)(1) directs the sentencing court to consider the factors set forth in 18 U.S.C. § 3553(a)."). The factors that the sentencing court may consider in determining early termination include: (1) "the nature and circumstances of the offense and the history and characteristics of the defendant"; (2) the necessity for the sentence to adequately deter criminal conduct, protect the public from the defendant's further crimes, and provide the defendant with required "educational or vocational training, medical care, or other correctional treatment in the most effective manner"; (3) the types of sentence and "the sentencing range established for" the defendant's crimes; (4)

"pertinent policy statement[s]" from the Sentencing Commission; (5) "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct," and (6) the necessity to furnish restitution to the victims of the offense. 18 U.S.C. §§ 3553(a)(1), (a)(2)(B)-(D), (a)(4)-(7).

"While there is not a great deal of reported decisional law analyzing motions for . . . the early termination of supervised release pursuant to 18 U.S.C. § 3583(e)(1), there is general agreement that the early termination of probation is a decision entrusted to the sound discretion of the District Court and is warranted only in cases where the defendant demonstrates changed circumstances, such as exceptionally good behavior." *United States v. Caruso*, 241 F. Supp. 2d 466, 468 (D.N.J. 2003); *see also United States v. Lussier*, 104 F.3d 32, 36 (2d Cir. 1997) ("Occasionally, changed circumstances-for instance, exceptionally good behavior by the defendant or a downward turn in the defendant's ability to pay a fine or restitution imposed as conditions of release-will render a previously imposed term or condition of release either too harsh or inappropriately tailored to serve the . . . goals of section 3553(a).").[7] Ultimately, the sentencing court retains "broad" discretion in determining whether to modify the terms of supervise release. *United States v. Wilson*, 707 F.3d 412, 416 (3d Cir. 2013); *United States v. Danzey*, 356 F. App'x 569, 570-71 (3d Cir. 2009) (citing *Burkey v. Marberry*, 556 F.3d 142, 149 (3d Cir. 2009)).

[7] Although *Lussier* is not controlling law in this Circuit, the Third Circuit has cited it favorably in the context of applying the 3553(a) factors to the modification of a supervised release in light of "a new, unforeseen circumstance." *United States v. Smith*, 445 F.3d 713, 717 (3d Cir. 2006); *see also United States v. Kay*, 283 F. App'x 944, 946 (3d Cir. 2008) (observing that the Third Circuit in *Smith* had cited *Lussier* and noting, without deciding a standard, that "district courts in our Circuit have used *Lussier* . . . as a guide to the exercise of discretion" in the modification of terms of supervised release).

Here, Defendant's reasons for early termination are not sufficient to meet the § 3553 factors.[8] The Third Circuit requires proof of extraordinary or significantly altered circumstances pursuant to § 3583(e). *See Laine*, 404 F. App'x at 572 (denying defendant's motion because, in part, "there was nothing exceptional or unusual about [defendant's] having been compliant with the terms of his supervised release"); *Lussier*, 104 F.3d at 36 (finding § 3583(e) authorizes district courts to terminate supervised release terms "to account for new or unforeseen circumstances."). Defendant offers no proof of changed or extraordinary circumstances; rather his only reasons for early termination are compliance with the terms of supervision and the desire to relocate in pursuit of a better job and living situation. Defendant's Brief at 5 ¶ 9. While the Court commends Defendant's compliance, mere compliance does not warrant early termination. *Laine*, 404 F. App'x at 572. Additionally, Defendant fails to identify where he intends to live and the potential job opportunities he is pursuing. *Id.* Intentions to relocate also do not meet the extraordinary circumstances standard. *Id.* More importantly, Defendant may relocate and request to be supervised in another jurisdiction. *See* 18 U.S.C. § 3605.

For the above reasons, Defendant's request for early termination of his supervised release is **DENIED**.

SO ORDERED.

/s/ Freda L. Wolfson
Freda L. Wolfson
United States District Judge

[8] The parties disagree over whether the Court has authority to grant Defendant's § 3583(e)(1) motion because 21 U.S.C. § 841(b)(1)(A) requires Defendant to serve a five-year minimum supervised release after incarceration. 18 U.S.C. § 3583(e)(1); 21 U.S.C. § 841(b)(1)(A); *see generally U.S. v. Sanchez-Gonzales*, 294 F.3d 563, 566 (3d Cir. 2002). However, because I have already found that Defendant has waived his right to challenge his sentence, the Court need not decide this issue.