

APPENDIX A

FILED
United States Court of Appeals Tenth
Circuit
December 2, 2020
Christopher M. Wolpert Clerk of
Court

UNITED STATES OF AMERICA,
Plaintiff - Appellee

v.
ALEXANDER CHRISTIAN MILES,
Defendant - Appellant.

No. 20-6150
(D.C. No. 5:06-CR-00096-HE-1)(W.D. Okla.)

ORDER AND JUDGMENT

[*1]

Before TYMKOVICH, Chief Judge, LUCERO and
McHUGH, Circuit Judges.

This matter is before the court on the government's motion to enforce the appeal waiver in Alexander Christian Miles' plea agreement. We grant the government's motion and dismiss the appeal.

BACKGROUND

In July 2001, Miles, then 43 years old, applied for a K-1 visa to bring his Cambodian fiancée to the United States, misrepresenting her age as 18 years old when he knew she was only 14. The visa was granted, and they moved to New York, where they were married in December 2001. Miles then misrepresented his wife's age in an application

for adjustment of status. In July 2002, they moved from New York to Oklahoma. Miles was indicted shortly thereafter under 18 U.S.C. § 2423(a) for transporting a minor across state lines with intent to engage in sexual activity contrary to state law. He ultimately pleaded guilty to falsely stating his then-fiancée's age in the K-1 visa application, in violation of 18 U.S.C. § 1001(a)(3). As part of a plea agreement, the government agreed to dismiss the charge under § 2423(a). Miles, in turn, waived his right to “[a]ppeal or collaterally challenge his guilty plea . . . and any other aspect of his conviction” as well as “his sentence as imposed by the Court and the manner in which the sentence is determined, provided the sentence is within or below the advisory guideline range determined by the Court to apply to this case.” Mot. to Enforce attach. 1 at 5. The court imposed a sentence of 5 years’ imprisonment and 3 years’ supervised release. Miles appealed the imposition of sex-offender conditions, and we affirmed. United States v. Miles, 411 F. App’x 126, 127 (10th Cir. 2010). Miles has since spent the past decade seeking post-conviction relief. He first filed a 28 U.S.C. § 2255 motion, which the district court denied based upon the collateral-challenge waiver in Miles’s plea agreement. We denied a certificate of appealability (COA). United States v. Miles, 546 F. App’x 730, 731 (10th Cir. 2012). After he was released from custody in 2013, Miles petitioned for a writ of coram nobis. The district court again enforced the collateral-challenge waiver and denied the petition. We affirmed. United States v. Miles, 553 F. App’x 846, 847 (10th Cir. 2014). Miles then filed a second petition for a writ of coram nobis, which the district [*2] court denied based on the

collateral-challenge waiver, the abuse-of-the-writ doctrine, and a lack of merit. We affirmed based on the abuse-of-the-writ doctrine and did not address the other grounds. *United States v. Miles*, 923 F.3d 798, 800-01 (10th Cir. 2019). Finally, in 2020, Miles filed a Motion for Clerical Error correction and Vacation of Conviction, contending, as he did in his prior filings, that his misrepresentations about his wife's age were immaterial. The district court again denied the motion based on the collateral-challenge waiver, the abuse-of-the-writ doctrine, and a lack of merit. Miles timely appealed.

DISCUSSION

The government has moved to enforce the appeal waiver in Miles's plea agreement under *United States v. Hahn*, 359 F.3d 1315 (10th Cir. 2004) (en banc) (per curiam). Under *Hahn*, 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." *Id.* at 1325; see also *United States v. Viera*, 674 F.3d 1214, 1217 (10th Cir. 2012) (applying *Hahn* analysis to denial of § 2255 claim based on collateral-challenge waiver). In his pro se response¹ to the government's motion, Miles contends only that his appeal does not fall within the scope of his appeal waiver.² He argues that because

1. Because Miles is pro se, we liberally construe his filings but will not act as his advocate. See *Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008).

2 We therefore do not address the remaining two factors under *Hahn*—whether the waiver was voluntary and whether enforcement would result in a miscarriage of justice. See *United States v. Porter*, 405 F.3d 1136, 1143 (10th Cir. 2005) (noting this court

the recommended sentence under the Sentencing Guidelines was 0 to 6 months and because the district court imposed a sentence of 60 months, he is “entitled to challenge both his conviction and his sentence on account of the District Court’s upward variance.” Resp. at 6. **But the exception to his waiver based on an upward variance from the Guidelines applies only to challenges to his sentence, not his conviction.** See Mot. to Enforce attach. 1 at 5 (waiving the right to “[a]ppeal[] [or] collaterally challenge . . . his sentence as imposed by the Court and the manner in which the sentence is determined, provided the sentence is within or below the advisory guideline range determined by the Court to apply to this case” (emphasis added)); see also id. at 6 (“It is provided that defendant specifically does not waive the right to appeal a sentence above the advisory guideline sentencing range determined by the Court to apply to this case.” (emphasis added)). An upward variance has no bearing on his waiver of his right to “[a]ppeal or collaterally challenge his guilty plea . . . and any other aspect of his conviction.” Id. at 5. **Here, Miles plainly is challenging his conviction, not his sentence.** See Resp. at 3 (describing his current challenge as being based on a 2019 U.S. Senate Report, which he alleges “provides newly available evidence that no reasonable fact finder could have found him guilty of a material misrepresentation in violation of 18 U.S.C. [*4] §1001(a)(3)” (emphasis added)); id. at 9 (arguing the waiver does not bar him “from insisting that his plea

does not need to address a Hahn factor that the defendant does not contest).

agreement be rescinded and his conviction reversed” (emphasis added)). In fact, Miles admits he “has fully completed his sentence.” Id. at 8. Accordingly, the exception to his appeal waiver does not apply, and this appeal “falls within the scope of the waiver.” Hahn, 359 F.3d at 1325. We therefore enforce Miles’s appeal waiver and grant the government’s motion to dismiss.

FILING RESTRICTIONS

The government also requests that we impose filing restrictions on Miles due to his pattern of abusive litigation. Miles opposes restrictions, first on the ground that he “does not expect to burden the federal judiciary with future pleading.”³ Resp. at 19. But if true, then he can hardly complain about restrictions on future filings. Miles also argues his claim of newly discovered evidence was “neither disingenuous[] nor frivolous.” Id. But he fails to acknowledge that his claim was barred by his collateral-challenge waiver and that his present appeal was barred by the appeal waiver. He also fails to address his vexatious litigation history spanning the past ten years, which the government aptly described in its motion, see Mot. to Enforce at 12 (“Despite agreeing that he would not challenge his conviction collaterally, including the current time, Dr. Miles has challenged his conviction

3. In his most recent appeal, however, this court found that Miles made “knowing and material misrepresentations in [his] filings,” including his *coram nobis* petition and supporting affidavit. Miles, 923 F.3d at 805 n.2. We thus directed the Clerk to send copies of the opinion to the State Bar of California, where Miles had been licensed to practice law, and the medical boards of four states where he was licensed to practice medicine so they could determine whether to take any disciplinary action.

[*5] collaterally on four occasions, claiming in each attack that the lies he told the INS were immaterial. This Court rejected his argument twice on the merits and held on a third occasion[] that his argument constituted an abuse of the writ." (citations omitted)). "Federal courts have the inherent power to regulate the activities of abusive litigants by imposing carefully tailored restrictions under appropriate circumstances." *Ysais v. Richardson*, 603 F.3d 1175, 1180 (10th Cir. 2010). Filing restrictions may be imposed when: "(1) the litigant's lengthy and abusive history is set forth; (2) the court provides guidelines as to what the litigant must do to obtain permission to file an action; and (3) the litigant received notice and an opportunity to oppose the court's order before it is instituted." *Id.* (internal quotation marks omitted). This court proposes to enjoin Miles from filing any further pro se filings with this court that raise the same or substantially similar issues arising out of the same criminal conviction or the same or similar set of facts and circumstances as asserted in the present appeal or in his prior appeals, including Nos. 12-6011, 13-6110, and 18-6119, unless he obtains permission to do so. To obtain the court's permission, Miles must take the following steps:

1. File a petition with the clerk of this court requesting leave to file a pro se proceeding;
2. Include in the petition the following information:
 - a. A list, by case name, number, and citation where applicable, of all proceedings currently pending or previously filed in this court by Miles, with a statement indicating the current

status or disposition of each proceeding; and [*6]

b. A list apprising this court of all outstanding injunctions, contempt orders, or other judicial directions limiting his access to state or federal court, including orders and injunctions requiring him to be represented by an attorney; said list to include the name, number, and citation, if applicable, of all such orders and injunctions;

3. File with the clerk a notarized affidavit, in proper legal form, which recites the issues he seeks to present, including a particularized description of the order or ruling being challenged and a short statement of the legal basis asserted for the challenge. The affidavit must also certify, to the best of his knowledge, that the legal arguments advanced are not frivolous or made in bad faith; that they are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; that the appeal or other proceeding is not interposed for any improper purpose; and that he will comply with all federal appellate rules and local rules of this court.

These documents shall be submitted to the clerk of this court, who shall forward them to the court for review to determine whether to permit the pro se appeal or other proceeding. Without the court's approval, the matter will not proceed. If the court approves the submission, an order will be entered indicating that the matter shall proceed in

accordance with the Federal Rules of Appellate Procedure and the Tenth Circuit Rules. Only then will the appeal or other proceeding formally be filed in this court.

CONCLUSION

We grant the government's motion to enforce Miles's appeal waiver and dismiss this appeal. Moreover, the filing restrictions set forth herein shall be [*7] imposed on Miles twenty days from the date of this order and judgment unless this court orders otherwise upon review of any objections.

Entered for the Court Per Curiam
[Emphasis added].

APPENDIX B
CONSTITUTIONAL AND STATUTORY
ADDENDUM

The Fifth Amendment to the U.S. Constitution provides, in relevant parts:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentation or indictment of a Grand Jury * * * nor be deprived of life, liberty, or property, without due process of law * * *

The Sixth Amendment to the U.S. Constitution provides, in relevant parts:

In all criminal prosecutions, the accused shall enjoy the right * * * to be informed of the nature and cause of the accusation * * *

The Federal Rules of Criminal Procedure, Rule 7(e), provides:

Amending an Information. Unless an additional or different offense is charged or a substantial right of the defendant is prejudiced, the court may permit an information to be amended **at any time before the verdict or finding.**

28 U.S.C. §2255 (h) provides:

A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—
(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and

convincing evidence that no reasonable fact-finder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

Rule 11 of the Federal Rules of Criminal Procedure provides in relevant parts:

(b) CONSIDERING AND ACCEPTING A GUILTY OR NOLO CONTENDERE PLEA.

(1) *Advising and Questioning the Defendant.* Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:

(A) the government's right, in a prosecution for perjury or false statement, to use against the defendant any statement that the defendant gives under oath;

(B) the right to plead not guilty, or having already so pleaded, to persist in that plea;

(C) the right to a jury trial;

(D) the right to be represented by counsel—and if necessary have the court appoint counsel—at trial and at every other stage of the proceeding;

(E) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify

and present evidence, and to compel the attendance of witnesses;

(F) the defendant's waiver of these trial rights if the court accepts a plea of guilty or nolo contendere;

(G) the nature of each charge to which the defendant is pleading;

(H) any maximum possible penalty, including imprisonment, fine, and term of supervised release;

(I) any mandatory minimum penalty;

(J) any applicable forfeiture;

(K) the court's authority to order restitution;

(L) the court's obligation to impose a special assessment;

(M) in determining a sentence, the court's obligation to calculate the applicable sentencing-guideline range and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. §3553(a);

(N) the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence; and

(O) that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

(2) *Ensuring That a Plea Is Voluntary.* Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and

determine that the plea is voluntary and did not result from force, threats, or promises (other than promises in a plea agreement).

(3) Determining the Factual Basis for a Plea. Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea.

(e) FINALITY OF A GUILTY OR NOLO CONTENDERE PLEA. After the court imposes sentence, the defendant may not withdraw a plea of guilty or nolo contendere, and the plea may be set aside only on direct appeal or collateral attack.

(f) ADMISSIBILITY OR INADMISSIBILITY OF A PLEA, PLEA DISCUSSIONS, AND RELATED STATEMENTS. The admissibility or inadmissibility of a plea, a plea discussion, and any related statement is governed by Federal Rule of Evidence 410.

(g) RECORDING THE PROCEEDINGS. The proceedings during which the defendant enters a plea must be recorded by a court reporter or by a suitable recording device. If there is a guilty plea or a nolo contendere plea, the record must include the inquiries and advice to the defendant required under Rule 11(b) and (c).

(h) HARMLESS ERROR. A variance from the requirements of this rule is harmless error if it does not affect substantial rights.

[Emphasis added].

APPENDIX C
SUPERCEDING INFORMATION

THE UNITED STATES ATTORNEY CHARGES:

In or about February of 2002,
--- ALEXANDER CHRISTIAN MILES, M.D. ---

knowingly and willfully made and used a false writing and document knowing the same to contain a materially false entry, in that, on an affidavit of support of an application for a K1 Visa by S.K., the defendant stated that SK was 18 years of age when he knew she was 18 years of age. The affidavit was a matter within the jurisdiction of the Immigration and Naturalization Service, part of the Executive Branch of the government of the United States.

All in violation of Title 18, United States Code, Section 1001(a)(3).

JOHN C. RICHTER
United States Attorney

/s/ Randal A. Sengel
RANDAL A. SENDEL
Assistant U.S. Attorney

APPENDIX D
PLEA AGREEMENT

[excerpts]

Introduction

1. This document contains the entire plea agreement between defendant, Alexander C. Miles, and the United States through its undersigned attorney. No other agreement or promise exists, nor may any additional agreement be entered into unless in writing and signed by all parties. **Any unilateral modification of this agreement is hereby rejected by the United States. This agreement applies only to the criminal violations described** and does not apply to any civil matter or any civil forfeiture proceeding except as specifically set forth.

* * *

Guilty Plea

2. Defendant agrees to enter a plea of guilty to a one-count Information charging making false statements in violation of 18 U.S.C. § 1001(a)(3). To be found guilty of violating 18 U.S.C. § 1001(a)(3), as charged in the Information, defendant must admit that, in a matter within the jurisdiction of the United States, he knowingly and willfully made or used a false writing or document, knowing the same to contain a materially false and fictitious statement or entry. Thus, the defendant must admit that he knowingly and willfully made or used **a false Affidavit of Support for an Alien Fiance Visa application for S.K.**; that the Affidavit made a materially false and fictitious statement that the age of S.K. was eighteen when he knew she was under eighteen years of age; and that the Affidavit and Visa application are

matters within the jurisdiction of the Executive Branch of the Government of the United States.

* * *

Waiver of Right to Appeal and Bring a Collateral Challenge

8. * * * Defendant further understands that Title 28, United States Code, Section 1291, and Title 18, United States Code, Section 3742, give him the right to appeal the judgment and sentence imposed by the Court. Acknowledging all this, defendant in exchange for the promises and concessions made by the United States in this plea agreement, knowingly and voluntarily waives his right to:

- a. Appeal or collaterally challenge his guilty plea, sentence and restitution imposed, and any other aspect of his conviction, including but not limited to any rulings on pretrial suppression motions or any other pretrial dispositions of motions and issues;
- b. Appeal, collaterally challenge, or move to modify under 18 U.S.C. § 3582(c)(2) or some other ground, his sentence as imposed by the Court and the manner in which the sentence is determined, provided the sentence is within or below the advisory guideline range determined by the Court to apply to this case. Defendant acknowledges that this waiver remains in full effect and is enforceable, even if the Court rejects one or more of the positions of the United States or defendant set forth in paragraph 7.

* * *

12. The defendant waives any claim that venue is not proper in the Western District of Oklahoma. **Defendant also waives all defenses based on the statute of limitations with respect to Count 1 of**

**the Information referenced in paragraph 2 of
this agreement.**

* * *

[Emphasis added].

APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

TRANSCRIPT OF PLEA OF GUILTY HAD ON JUNE 24TH, 2009 BEFORE THE HONORABLE JOE HEATON, U.S. DISTRICT JUDGE, PRESIDING

[Excerpts]

A P P E A R A N C E S:

Mr. Randal A. Sengel, U.S. Attorney's Office, 210 West Park Avenue, Suite 400, Oklahoma City, OK 73102, appearing on behalf of the United States of America.

Mr. J.W. Coyle, III, Coyle Law Office, 125 Park Avenue, Fifth Floor, Oklahoma City, OK 73102, appearing on behalf of the defendant.

(The following was had in open court on
June 24, 2009:)

THE COURT: Good morning. Looks like we've got the lights down a little low here. I don't know what the reason for that is but we'll forge ahead in any event. We're here on United States versus Miles, Criminal Case 06-96. Could I have appearances, please.

MR. SENGEL: Randy Sengel for the United States.

MR. COYLE: John W. Coyle on behalf of Dr. Miles.

THE COURT: All right. Mr. Coyle, if you and your client would step to the podium, we'll move ahead here.

MR. COYLE: Yes, sir.

THE COURT: Mr. Sengel, have the victims of this offense been notified of the hearing?

MR. SENGEL: They have, your Honor.

THE COURT: And I would assume that there are no victims with respect to the charge alleged in the superseding information. But the --

MR. SENGEL: The victim I believe technically, of course, would be the government; however, we, have, nevertheless notified the individual named in the indictment.

THE COURT: Of the original charge?

MR. SENGEL: Of the original indictment. That's correct.

THE COURT: All right. And have you had any indication that that person wants to be heard in connection with this?

MR. SENGEL: No, your Honor.

THE COURT: All right. Sir, you are Alexander Christian Miles; is that correct?

THE DEFENDANT: That is correct.

THE COURT: How old are you, Mr. Miles?

THE DEFENDANT: Currently 51.

THE COURT: I should say Doctor. You're Dr. Miles. Dr. Miles, are you taking any medications or under the influence of drugs or alcohol or anything that would affect your ability to understand these proceedings here this morning?

THE DEFENDANT: No.

THE COURT: If at any point during the course of this hearing I should ask you anything that you don't understand or that you're unclear about, would you be sure and let me know that so that I can be certain that we understand each other?

THE DEFENDANT: Yes.

THE COURT: I understand it's your intention to enter a guilty plea to a superseding information

that was filed on June 19th of 2009. Have you received a copy of that superseding information?

THE DEFENDANT: Yes, sir.

THE COURT: **And you've gone over that with your lawyer?**

THE DEFENDANT: Yes, sir.

THE COURT: Mr. Sengel, if you would, please, state for the record the substance of the charge to which the defendant will be pleading and also the potential punishment.

MR. SENDEL: Yes, your Honor.

The information charges that in or about February of 2002, Alexander Christian Miles knowingly and willfully made and used a false writing and document knowing the same to contain a materially false entry. **The matter was within the jurisdiction of the Immigration and Naturalization Service, part of the executive branch of the government of the United States.** All in violation of Title 18 United States Code, Section 1001(a)(3).

The maximum penalty that could be imposed upon conviction is not more than five years in prison, or a \$250,000 fine, or both such fine and imprisonment, not more than three years of supervised release, the conditions of which if violated could lead to an additional period of imprisonment, and a \$100 special assessment.

THE COURT: Mr. Coyle, do you agree with that description of the charge and the potential punishment?

MR. COYLE: Yes, your Honor.

THE COURT: Dr. Miles, I would advise you that you're not required to make any statement at this time, and any statement that you do make could

potentially be used against you in a prosecution for perjury if you should testify falsely in any respect. With that reminder, I would ask that you raise your right hand and be sworn by the clerk.

(Defendant sworn)

THE COURT: Dr. Miles, the purpose of this hearing, of course, is to give you the opportunity to enter the guilty plea that you've indicated you want to enter, but it's also for the purpose of me being certain that you understand the significance of doing that, and that you are fully aware of the constitutional rights that you would be waiving with a guilty plea. So I want to cover those with you at this time to be certain that you understand the rights that you would be giving up with a guilty plea.

First of all, you are charged in this – the present charge to which you would be entering a plea is proffered by a superseding information. Because the charge is a felony charge, you have the right to be charged by indictment, which means that you would be -- your case would be presented to a grand jury composed of 16 to 23 citizens, and at least 12 of them would have to agree there's probable cause to believe that you committed the crime charged. In order for you to proceed on the information that's been filed here you would have to waive your right to be charged by indictment. Is that your desire?

THE DEFENDANT: Yes. I'm waiving my right.

THE COURT: All right. I have here at the desk a written waiver of indictment that appears to have your signature on it. Is that in fact your signature on that document?

THE DEFENDANT: That is in fact my signature, sir.

THE COURT: You, of course, have the right to enter a plea of not guilty or to stand on a plea of not guilty if you choose to do that. You understand that?

THE DEFENDANT: I do, sir.

THE COURT: And if you enter a plea of not guilty, you would have the right to a speedy and public trial by jury. You would have the right to the assistance of an attorney at all stages of the proceeding, and if you can't afford counsel, counsel will be appointed for you at public expense. Do you understand those rights?

THE DEFENDANT: I understand, sir.

THE COURT: You would have the right to see and hear the witnesses against you and to cross-examine the various witnesses, to test the evidence offered against you in both the testimonial form and otherwise. You would have the right to utilize the subpoena powers of the court in order to compel other persons to appear and testify as witnesses on your behalf. Do you understand those rights?

THE DEFENDANT: I do, sir.

THE COURT: You would have the right not to incriminate yourself, which is to say that you would be under no obligation to take the witness stand, and the jury would be instructed that they are not to hold it against you in any way that you elected to stand on your constitutional rights and not testify. Do you understand those rights?

THE DEFENDANT: I do, sir.

THE COURT: You would have the right to be and you would be presumed innocent unless and until your guilt was established to the unanimous satisfaction of a 12-person jury beyond a reasonable doubt. Do you understand that?

THE DEFENDANT: Yes, sir.

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THE COURT: And with a guilty plea here this morning you understand that there will be no trial, and that you will be found guilty based purely on your statements here this morning?

THE DEFENDANT: Yes, sir.

THE COURT: Mr. Coyle, are you satisfied from your discussions with your client that he fully understands the charges against him in this case, the possible punishment, and also the constitutional rights that he would be giving up with a guilty plea?

MR. COYLE: Yes, your Honor.

THE COURT: And Dr. Miles, do you feel like you fully understand the charge in this case?

THE DEFENDANT: Yes, sir.

THE COURT: And the potential punishment as described by Mr. Sengel a few moments ago?

THE DEFENDANT: Yes, your Honor.

THE COURT: And do you feel as well that you fully understand the constitutional rights that you would be giving up with a guilty plea?

THE DEFENDANT: Yes, sir.

THE COURT: Well, knowing the nature of the charge and the rights you will be giving up with a plea, I would ask you at this time, how do you plead?

THE DEFENDANT: Guilty as charged.

THE COURT: I also have here at the desk in addition to the indictment waiver that I referred to a moment ago, I have also what appears to be your waiver of jury trial. Is that your signature that appears on that document as well?

THE DEFENDANT: It is, your Honor.

THE COURT: There has also been submitted on your behalf in connection with the plea a Petition to Enter Guilty Plea. That's the eight- or ten-page