

## APPENDIX A

*United States v. Billy Dean Smith,*  
2021 U.S. App. LEXIS 28222 (9th Cir. 2021)

**United States v. Smith**

United States Court of Appeals for the Ninth Circuit

September 17, 2021, Filed

No. 20-30254

**Reporter**

2021 U.S. App. LEXIS 28222 \*

UNITED STATES OF AMERICA, Plaintiff-  
Appellee, v. BILLY DEAN SMITH, Defendant-  
Appellant.

**Prior History:** [\*1] D.C. No. 9:20-cr-00016-  
DWM-1. District of Montana, Missoula.

**Disposition:** DISMISSED.

**Counsel:** For UNITED STATES OF AMERICA,  
Plaintiff - Appellee: Leif Johnson, Assistant  
U.S. Attorney, Office of the US Attorney,  
Billings, MT; Cyndee L. Peterson, USMI -  
OFFICE OF THE U.S. ATTORNEY, Missoula,  
MT.

For BILLY DEAN SMITH, Defendant -  
Appellant: John Rhodes, Esquire, Assistant  
Federal Public Defender, FDMT - FEDERAL  
DEFENDERS OF MONTANA (MISSOULA),  
Missoula, MT.

**Judges:** Before: PAEZ, NGUYEN, and  
OWENS, Circuit Judges.

**Opinion**

**ORDER**

Appellee's motion to dismiss this appeal in light of the valid appeal waiver (Docket Entry No. 11) is granted. *See United States v. Harris, 628 F.3d 1203, 1205 (9th Cir. 2011)* (knowing and voluntary appeal waiver whose language encompasses the right to appeal on the grounds raised is enforceable). Appellant's argument that the appeal waiver is unenforceable because his sentence is unconstitutional is unavailing. The district court did not violate appellant's right to due process by considering contested portions of the presentence investigation report because the disputed facts were supported by minimal indicia of reliability. *See United States v. Vanderwerffhorst, 576 F.3d 929, 936 (9th Cir. 2009)* ("Challenged information is deemed false or unreliable if it lacks 'some minimal indicium of reliability beyond mere allegation.'").

**DISMISSED [\*2] .**

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APPENDIX B

U.S. Const. Amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.