

APPENDIX A

(Judgment and Opinion of the United States Court of Appeals for the
Fifth Circuit)

United States v. Wali

United States Court of Appeals for the Fifth Circuit

December 11, 2023, Filed

No. 23-10459 Summary Calendar

Reporter

2023 U.S. App. LEXIS 32671 *; 2023 WL 8540031

UNITED STATES OF AMERICA, Plaintiff—Appellee, versus AYOOB WALI, Defendant—Appellant.

Notice: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Prior History: [*1] Appeal from the United States District Court for the Northern District of Texas. USDC No. 4:22-CR-207-1.

[United States v. 01, 2022 U.S. Dist. LEXIS 220891 \(N.D. Tex., Nov. 16, 2022\)](#)

Disposition: DISMISSED.

Counsel: For United States of America, Plaintiff - Appellee: Stephen S. Gilstrap, Brian W. McKay, Esq., Assistant U.S. Attorney, U.S. Attorney's Office, Dallas, TX.

For Ayoob Wali, Defendant - Appellant: William Reynolds Biggs, Fort Worth, TX.

Judges: Before BARKSDALE, ENGELHARDT, and WILSON, Circuit Judges.

Opinion

PER CURIAM:*

Ayoob Wali pleaded guilty pursuant to a written plea agreement to unlawful possession of a machinegun, in violation of [18 U.S.C. §§ 922\(o\)](#) (prohibiting possession), [924\(a\)\(2\)](#) (limiting imprisonment to "not more than 10 years"). His written plea agreement included an appeal waiver, with exceptions not at issue in this instance.

Wali challenges his within-Guidelines 71-months' imprisonment sentence. He contends the district court violated the [Second Amendment](#) by applying an enhanced base offense level of 20 pursuant to its finding he was a "prohibited person" under [Sentencing Guideline § 2K2.1\(a\)\(4\)\(B\)](#) (outlining base offense level for possession of firearms). Wali also requests our court recognize and apply a miscarriage-of-justice exception to the otherwise valid appeal waiver.

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

The Government seeks to enforce the waiver. We turn first to that issue.

Whether [*2] an appeal waiver bars an appeal is a question our court reviews *de novo*. *E.g., United States v. Keele, 755 F.3d 752, 754 (5th Cir. 2014)*. The question turns on "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)*.

Wali does not dispute he knowingly and voluntarily waived his right to appeal his conviction and sentence; accordingly, the appeal waiver is valid and enforceable. *See United States v. McKinney, 406 F.3d 744, 746 (5th Cir. 2005)* ("Because [defendant] indicated that he had read and understood the plea agreement, which includes an explicit, unambiguous waiver of appeal, the waiver was both knowing and voluntary."). He also does not contest that, by its terms, the waiver applies to his claim that *Guideline § 2K2.1(a)(b)(4)* was applied in error.

Instead, as noted *supra*, he requests we recognize and apply a miscarriage-of-justice exception to the waiver. Our court has "declined explicitly either to adopt or to reject" this exception. *United States v. Barnes, 953 F.3d 383, 389 (5th Cir. 2020)*. In any event, even if this exception were to apply, Wali has not shown a miscarriage of justice. *See, e.g., United States v. Portillo-Palencia, 837 F. App'x 286, 289-91 (5th Cir. 2020)*.

DISMISSED.

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APPENDIX B

**(Judgment and Sentence of the United States District Court for the
Northern District of Texas)**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

AYOOB WALI

Case Number: 4:22-CR-207-Y(1)

Frank L. Gatto, assistant U.S. attorney

William R. Biggs, attorney for the defendant

On November 16, 2022, the defendant, Ayoob Wali, entered a plea of guilty to count two of the two-count indictment. Accordingly, the defendant is adjudged guilty of such count, which involves the following offense:

<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE CONCLUDED</u>	<u>COUNT</u>
18 U.S.C. §§ 922(o) and 924(a)(2)	Unlawful Possession of a Machinegun	May 3, 2022	2

The defendant is sentenced as provided in pages two through three of this judgment. The sentence is imposed under Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission under Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 for count two of the two-count indictment.

Upon motion of the government, count one of the two-count indictment is dismissed as to this defendant only.

The defendant shall notify the United States attorney for this district within thirty days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Sentence imposed May 2, 2023.



TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Signed May 3, 2023.

IMPRISONMENT

The defendant, Ayoob Wali, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 71 months on count two of the two-count indictment.

The defendant is remanded to the custody of the United States marshal.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of 3 years on count two of the two-count indictment.

The defendant, while on supervised release, shall comply with the standard conditions recommended by the U. S. Sentencing Commission at §5D1.3(c) of the United States Sentencing Commission Guidelines Manual, and shall:

- not commit another federal, state, or local crime;
- not possess illegal controlled substances;
- not possess a firearm, destructive device, or other dangerous weapon;
- cooperate in the collection of DNA as directed by the probation officer, as authorized by the Justice for All Act of 2004;
- report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Federal Bureau of Prisons;
- refrain from any unlawful use of a controlled substance. The defendant must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the Court;
- participate in outpatient mental-health treatment services as directed by the probation officer until successfully discharged, which services may include prescribed medications by a licensed physician, with the defendant contributing to the costs of services rendered (copayment) at a rate of at least \$25 per month; and
- participate in an outpatient program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered (copayment) at the rate of at least \$25 per month.

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

FORFEITURE

Under 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c), it is hereby ordered that defendant's interest in the following property is condemned and forfeited to the United States:

a Glock, model 29, 10-millimeter pistol bearing serial no. BWTV573;
a Glock, model 22, .40-caliber pistol bearing serial no. BWTM268;
a Glock, model 17, 9-millimeter pistol bearing serial no. BWRC149;
a Glock, model 19, 9-millimeter pistol bearing serial no. BVUM168;
a Glock, model 19, 9-millimeter pistol bearing serial no. BPDX885;
a Glock, model 26, 9-millimeter pistol serial no. AGPRI08;
a Glock, model 27, .40-caliber pistol bearing serial no. BWBW224;
a Glock, model 23, .40-caliber pistol bearing serial no. BVCZ165; and
a Ruger, model Security-9, 9-millimeter pistol bearing serial no. 382-07548.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

United States marshal

BY _____
deputy marshal