

EXHIBIT A

No. 17-1695

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ERIC JUNOD,

Defendant-Appellant.

FILED
Feb 28, 2018
 DEBORAH S. HUNT, Clerk

ORDER

Before: BATCHELDER, GRIFFIN, and LARSEN, Circuit Judges.

Defendant Eric Junod appeals his judgment in a criminal case for attempted online coercion and enticement of a minor and/or online coercion and enticement of a minor, pursuant to a guilty plea. The government moves to dismiss the appeal based on an appellate-waiver provision in Junod's plea agreement, and Junod responds in opposition. On appeal, Junod challenges the calculation of his sentencing guidelines range.

A defendant may waive his right to appeal if the waiver is knowingly and voluntarily made. *United States v. Beals*, 698 F.3d 248, 255 (6th Cir. 2012); *United States v. Toth*, 668 F.3d 374, 378 (6th Cir. 2012); *United States v. Wilson*, 438 F.3d 672, 673 (6th Cir. 2006). "The sine qua non of a valid waiver is that the defendant [must] enter into the agreement knowingly and voluntarily." *United States v. Fleming*, 239 F.3d 761, 764 (6th Cir. 2001). Before accepting a guilty plea, the district court "must inform the defendant of, and determine that the defendant

No. 17-1695

-2-

understands . . . the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence.” Fed. R. Crim. P. 11(b)(1)(N).

Junod’s plea colloquy comported with Rule 11(b). When the “defendant testified at his plea hearing that he had reviewed the plea agreement with counsel, that he understood all of the agreement’s provisions, and that his guilty plea was not coerced,” a court may conclude that he entered the “plea agreement—and accepted the waiver of appellate rights contained therein—knowingly and voluntarily.” *United States v. Calderon*, 388 F.3d 197, 200 (6th Cir. 2004). Junod does not argue that he entered his plea involuntarily or unknowingly. Rather, he asserts that his challenge to the calculation of his guidelines range falls outside the scope of his valid appeal waiver, citing *United States v. McCoy*, 508 F.3d 74, 78 (1st Cir. 2007) (holding that a waiver precluding any appeal if the sentence imposed is within the guidelines range does not bar an appeal of an alleged misapplication of the guidelines).

The comparison between Junod’s waiver and the waiver in *McCoy* is inapposite. In *McCoy*, the defendant waived his right to challenge “any sentence that falls ‘within the guideline range.’” *Id.* The First Circuit held that this did not waive the defendant’s claim that, although he received an in-guidelines sentence, the district court had miscalculated the applicable guidelines range. *Id.* The plain language of Junod’s waiver, however, provides that his right to appeal is contingent on his receiving a sentence above his bargained-for 240-month cap. Because he received a sentence below that cap (180 months), the plain terms of his plea agreement foreclose his appeal.

Absent ambiguity, the court must “give effect to the intent of the parties as expressed by the plain language in the plea agreement.” *Beals*, 698 F.3d at 256. If Junod had wished to retain the right to appeal the determination of his guidelines range—a determination to which he also

No. 17-1695

-3-

agreed in his plea deal—he “could have, and should have, insisted on signing a different plea bargain.” *United States v. Coker*, 514 F.3d 562, 574 (6th Cir. 2008). Because Junod received a sentence below the 240-month cap the parties set in Junod’s plea agreement, the explicit language of his valid appeal waiver precludes a challenge to the calculation of his guidelines range.

The motion to dismiss the appeal is **GRANTED**.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", is written over a horizontal line.

Deborah S. Hunt, Clerk