

No. 25-A-552

IN THE
SUPREME COURT OF THE UNITED STATES

GREGORY JOHNSON,
Petitioner,

v.

UNITED STATES OF AMERICA
Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals for the Fifth Circuit

APPENDIX

- A. Opinion of the U.S. Court of Appeals for the Fifth Circuit
(August 15, 2025)A-1 – A-3
- B. Judgment of the U.S. Court of Appeals for the Fifth Circuit
(August 15, 2025)A-4 – A-5

United States Court of Appeals for the Fifth Circuit

No. 24-30442
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

August 15, 2025

Lyle W. Cayce
Clerk

United States of America,

Plaintiff—Appellee,

versus

Gregory Johnson, Jr.,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:22-CR-96-1

Before Higginbotham, Jones, and Oldham, *Circuit Judges*.

Per Curiam:*

Gregory Johnson, Jr., pleaded guilty, pursuant to a written plea agreement, to conspiracy to distribute and possess with the intent to distribute 500 grams or more of cocaine hydrochloride, in violation of 21 U.S.C. § 846. The district court determined that he was a career offender under U.S.S.G. § 4B1.1 and sentenced him below the enhanced guidelines

* This opinion is not designated for publication. See 5th Cir. R. 47.5.

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range to 140 months of imprisonment, followed by a four-year term of supervised release. On appeal, Johnson challenges his sentence, arguing that application of the career offender Guideline was improper because his prior Louisiana conviction for armed robbery was not a crime of violence.

Invoking the waiver of appeal provision in Johnson's plea agreement, the Government moves for dismissal of the appeal, urging that the waiver is valid and enforceable and precludes Johnson from challenging his conviction or sentence except where the sentence imposed is higher than the statutory maximum or a claim of ineffective assistance of counsel is raised. Johnson opposes the Government's motion, arguing that the waiver provision in the plea agreement is not enforceable because it is inherently unknowing and involuntary, and enforcement would result in a miscarriage of justice.

The validity of an appeal waiver is a question of law that we review de novo. *United States v. Keele*, 755 F.3d 752, 754 (5th Cir. 2014). The record establishes that Johnson read and understood the plea agreement, which contained an "explicit, unambiguous waiver of appeal." *United States v. McKinney*, 406 F.3d 744, 746 (5th Cir. 2005). Thus, Johnson's appeal waiver was knowing and voluntary. See *United States v. Higgins*, 739 F.3d 733, 736 (5th Cir. 2014); Fed. R. Crim. P. 11(b)(1)(N). The record also reflects that the appeal waiver "applies to the circumstances at hand, based on the plain language of the [plea] agreement," *Higgins*, 739 F.3d at 736, as the sentencing issue raised does not fall within either of the stated exceptions to the appeal waiver. Although a defendant is released from an appeal waiver if the Government has breached the plea agreement, see *United States v. Gonzalez*, 309 F.3d 882, 886 (5th Cir. 2002), Johnson does not allege such a breach, and the record reveals that the Government complied with the terms of the plea agreement. Additionally, as Johnson concedes, this court does not recognize a miscarriage-of-justice exception to an appeal waiver. See *United States v. Chaney*, 120 F.4th 1300, 1303 (5th Cir. 2024), *petition for cert.*

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filed (U.S. Feb. 6, 2025) (No. 24-6543); *see also United States v. Barnes*, 953 F.3d 383, 389 (5th Cir. 2020).

Accordingly, IT IS ORDERED that the Government's motion for dismissal is GRANTED, and the appeal is DISMISSED.

United States Court of Appeals for the Fifth Circuit

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JUDGMENT

Before Higginbotham, Jones, and Oldham, *Circuit Judges*.

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the appeal is DISMISSED.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion

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for stay of mandate, whichever is later. See Fed. R. App. P. 41(b). The court may shorten or extend the time by order. See 5th Cir. R. 41 I.O.P.



**Certified as a true copy and issued
as the mandate on Sep 05, 2025**

Attest:

Lytle W. Canyca
Clerk, U.S. Court of Appeals, Fifth Circuit