

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.

EXHIBIT

A

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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

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

August 15, 2025

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 24-30442 USA v. Johnson
USDC No. 2:22-CR-96-1

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and Fed. R. App. P. 39, 40, and 41 govern costs, rehearings, and mandates. **Fed. R. App. P. 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. Fed. R. App. P. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk

Amanda M. Duroncelet

By:

Amanda M. Duroncelet, Deputy Clerk

Enclosure(s)

Mr. Kevin G. Boitmann
Mrs. Hannah Lampo Brewton
Ms. Rachal Cassagne
Mr. Stuart D. Kottle
Mr. Nolan D. Paige