

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

United States v. Lisi

United States v. Lisi, 802 F. App'x 639 (2d Cir. 2020) · No. 17-3158 · Decided March 24, 2020

SUMMARY

The Second Circuit affirmed the conviction and sentence of Brandon Lisi, a former attorney who pleaded guilty to conspiracy to commit wire fraud. The court held that Lisi's valid and enforceable appellate waiver barred his challenge that the sentence violated the parsimony clause of 18 U.S.C. § 3553(a), and that his ineffective assistance of counsel claim was not reviewable on direct appeal. The court also rejected Lisi's pro se arguments that his plea was involuntary and that venue was improper, noting that venue objections are waived by a guilty plea.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Pierre N. Leval; Peter W. Hall; Gerard E. Lynch
JURISDICTION	Federal
DECIDED	March 24, 2020
DOCKET	17-3158
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment of the United States District Court for the Southern District of New York (Failla, J.)
PRECEDENTIAL VALUE	unpublished
PARTIES	Brandon Lisi v. United States of America

TOPICS

- criminal procedure
- appellate procedure
- plea bargaining
- sentencing
- waiver

PRACTICE AREAS

- Criminal Law
- Appellate Procedure

QUESTIONS PRESENTED

1. Whether Lisi's sentence violates the parsimony clause of 18 U.S.C. § 3553(a) because the sentencing court did not mention parsimony during sentencing, making the sentence procedurally unreasonable.

2. Whether Lisi's attorney at sentencing was ineffective.
3. Whether Lisi's plea agreement was entered voluntarily and knowingly.
4. Whether the district court erred in sentencing Lisi.
5. Whether venue in the Southern District of New York was proper.

HOLDINGS

1. Lisi's challenge to his sentence, including his parsimony clause argument, is barred by the appellate waiver contained in his plea agreement.
2. The court does not consider this claim at this time because it was not raised below and the appellate record is insufficient. Lisi may raise the issue in a petition under 28 U.S.C. § 2255.
3. Lisi's arguments that his guilty plea was not voluntary or knowing are unavailing.
4. Lisi has waived any argument that venue was improper.

KEY QUOTATIONS

“Waivers of the right to appeal a sentence are presumptively enforceable.” (at 3)

“Exceptions to the presumption of the enforceability of a waiver . . . occupy a very circumscribed area of our jurisprudence.” (at 3)

“In no circumstance . . . may a defendant, who has secured the benefits of a plea agreement and knowingly and voluntarily waived the right to appeal a certain sentence, then appeal the merits of a sentence conforming to the agreement.” (at 5-6)

“This rule [that a defendant cannot appeal his sentence after having knowingly and voluntarily waived the right to appeal that sentence] has been held to bar even those appeals which claim that the sentencing court illegally sentenced the defendant under the Guidelines and relevant statutes, so long as the court nevertheless imposed a sentence within the range outlined in the agreement.” (at 6)

“We need not decide whether Appellant's sentence violated the parsimony clause . . . because we hold that the appeal waiver in Appellant's plea agreement is enforceable.” (at 6)

“In light of the way our system has developed, in most cases a motion brought under § 2255 is preferable to direct appeal for deciding claims of ineffective assistance.” (at 6-7)

“Venue is not jurisdictional and may be waived in a criminal case by entering into a valid plea agreement.” (at 9)

FACTUAL BACKGROUND

Brandon Lisi, a former New York attorney, conspired with a co-defendant to steal client funds. He was charged with conspiracy to commit wire fraud, conspiracy to commit bankruptcy fraud, and conspiracy to launder money. Pursuant to a plea agreement, Lisi pled guilty to conspiracy to commit wire fraud. The district court sentenced him to 38 months' imprisonment.

PROCEDURAL HISTORY

Lisi was indicted in July 2015 on three criminal counts (conspiracy to commit wire fraud, conspiracy to commit bankruptcy fraud, and conspiracy to launder money). On April 3, 2017, pursuant to a plea agreement, Lisi pled guilty to conspiracy to commit wire fraud. The district court entered judgment on September 21, 2017 and sentenced Lisi to 38 months' imprisonment. Lisi appealed.

DISPOSITION

affirmed

CASES CITED

- *Wilson v. McGinnis*, 413 F.3d 196, 199 (2d Cir. 2005)
- *Brady v. United States*, 397 U.S. 742, 748 (1970)
- *United States v. Arevalo*, 628 F.3d 93, 98 (2d Cir. 2010)
- *United States v. Burden*, 860 F.3d 45, 51 (2d Cir. 2017)
- *United States v. Gomez-Perez*, 215 F.3d 315, 319 (2d Cir. 2000)
- *United States v. DeJesus*, 219 F.3d 117, 121 (2d Cir. 2000)
- *United States v. Salcido-Contreras*, 990 F.2d 51, 53 (2d Cir. 1993)
- *United States v. Rosa*, 123 F.3d 94, 97 (2d Cir. 1997)
- *United States v. Ruiz*, 272 F. App'x 19, 20 (2d Cir. 2008)
- *Massaro v. United States*, 538 U.S. 500, 504 (2003)
- *United States v. Khedr*, 343 F.3d 96, 99 (2d Cir. 2003)
- *United States v. Youngs*, 687 F.3d 56, 59 (2d Cir. 2012)
- *United States v. Calderon*, 243 F.3d 587, 590 (2d Cir. 2001)
- *United States v. Lisi*, 706 F. App'x 48 (2d Cir. 2017)