

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

United States v. Sakellarion

649 F.3d 634 (7th Cir. 2011) · No. No. 10-2245 · Decided August 19, 2011

SUMMARY

The Seventh Circuit held that Nikole Sakellarion's knowing and voluntary appellate waiver in her original plea agreement remained enforceable. Because she did not seek to withdraw her guilty plea or establish that the original agreement was unenforceable, the court declined to review her claim that the government acted in bad faith by withdrawing from a proposed supplemental plea agreement. The court dismissed the appeal.

CASE DETAILS

COURT	United States Court of Appeals for the Seventh Circuit
WRITING FOR THE COURT	Tinder, Circuit Judge; Hamilton, Circuit Judge; Murphy, District Judge, sitting by designation
JURISDICTION	Federal
DECIDED	August 19, 2011
DOCKET	No. 10-2245
DISPOSITION	dismissed
PROCEDURAL POSTURE	Sakellarion appealed from the sentence imposed after the district court accepted her Rule 11(c)(1)(C) guilty-plea agreement. The government sought dismissal of the appeal based on the agreement's express appellate waiver.
PRECEDENTIAL VALUE	published and precedential Seventh Circuit opinion
PARTIES	Nikole Sakellarion v. United States of America

TOPICS

- appellate procedure
- plea bargaining
- criminal procedure
- sentencing

PRACTICE AREAS

- criminal procedure
- appellate procedure
- plea agreements
- sentencing

QUESTIONS PRESENTED

1. Whether Sakellarion's express appellate waiver remained enforceable when she alleged that the government acted in bad faith by withdrawing from a supplemental agreement to reduce her sentence.
2. Whether a defendant may challenge a district court's rejection of an alleged plea-agreement breach while leaving the guilty plea and original plea agreement in place.
3. Whether Sakellarion's failure to seek withdrawal of her guilty plea left the appellate court with any reviewable issue.

HOLDINGS

1. A voluntary and knowing appellate waiver with express and unambiguous terms remains enforceable when the defendant merely claims that the government breached or acted in bad faith regarding a supplemental plea agreement, unless the plea agreement itself is set aside.
2. Because Sakellarion did not seek to withdraw her guilty plea or otherwise invalidate the original plea agreement, the appellate waiver required dismissal of her appeal.

KEY QUOTATIONS

“Because Sakellarion never sought to withdraw her plea of guilty entered under that agreement, we have nothing to review.” (649 F.3d at 636)

“Thus, because Sakellarion's plea agreement with its waiver of her appellate rights remains an enforceable agreement between herself and the government, its appellate waiver requires us to dismiss her appeal.” (649 F.3d at 639)

FACTUAL BACKGROUND

Sakellarion admitted distributing approximately 2.5 kilograms of cocaine and 570 grams of crack cocaine and cooperated with federal investigators. She entered a written Rule 11(c)(1)(C) plea agreement containing an express waiver of appellate and collateral-attack rights in exchange for substantial sentencing concessions. During sentencing, the parties discussed a supplemental agreement that would have reduced her sentence to 43 months, but the government withdrew after multiple positive drug tests during pretrial supervision. The district court found no defect in the drug testing or governmental bad faith, imposed the original agreed sentence of 60 months, and Sakellarion appealed.

PROCEDURAL HISTORY

Sakellarion pleaded guilty under an agreement requiring a sentence approximately one-half of the applicable guideline minimum or statutory minimum, conditioned on the government's substantial-assistance recommendation. The district court rejected her claim that the government acted in bad faith by withdrawing from a later, supplemental agreement that would have produced a lower sentence, imposed the original agreed sentence of 60 months, and denied further continuances. Sakellarion appealed without moving to withdraw her guilty plea.

DISPOSITION

dismissed

CASES CITED

- United States v. Sines, 303 F.3d 793, 798 (7th Cir. 2002)
- United States v. Woods, 581 F.3d 531, 533-34 (7th Cir. 2009)
- United States v. Hare, 269 F.3d 859, 860-61 (7th Cir. 2001)
- United States v. Aslan, 644 F.3d 526, 534-35 (7th Cir. 2011)
- United States v. Mason, 343 F.3d 893, 894 (7th Cir. 2003)
- United States v. Quintero, 618 F.3d 746, 751-52 (7th Cir. 2010)
- United States v. Thomas, 639 F.3d 786, 788 (7th Cir. 2011)
- United States v. Whitlow, 287 F.3d 638, 640 (7th Cir. 2002)
- Nunez v. United States, 546 F.3d 450, 454 (7th Cir. 2008)
- United States v. Wenger, 58 F.3d 280 (7th Cir. 1995)
- Wade v. United States, 504 U.S. 181, 185-86 (1992)
- United States v. Deberry, 576 F.3d 708, 711 (7th Cir. 2009)
- United States v. Miller, 458 F.3d 603, 605 (7th Cir. 2006)
- United States v. Wilson, 390 F.3d 1003, 1012-13 (7th Cir. 2004)
- Mabry v. Johnson, 467 U.S. 504, 509-10 (1984)
- Puckett v. United States, 556 U.S. 129, 129, 1430 n.1 (2009)
- United States v. Traynoff, 53 F.3d 168, 171 (7th Cir. 1995)
- Wayte v. United States, 470 U.S. 598, 607 (1985)
- United States v. Goodwin, 457 U.S. 368, 380 n.11 (1982)
- United States v. Scott, 631 F.3d 401, 406 (7th Cir. 2011)
- United States v. Christian, 342 F.3d 744, 748-49 (7th Cir. 2003)
- Rodriguez v. Peters, 63 F.3d 546, 563 (7th Cir. 1995)

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