

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States v. Rennie

No. No. 20-60524, United States Court of Appeals for the Fifth Circuit (May 3, 2021)

SUMMARY

In an unpublished per curiam opinion, the Fifth Circuit granted the government’s motion to dismiss Rodney Rennie’s appeal based on a valid appeal waiver in his plea agreement. Rennie had pleaded guilty to conspiracy to possess with intent to distribute 500 grams or more of methamphetamine and was sentenced to 240 months, but his challenge to the district court’s application of the imported-methamphetamine enhancement under U.S.S.G. § 2D1.1(b)(5) fell within the waiver’s broad language. Because the waiver was knowing and voluntary and Rennie did not address it or respond to the government’s motion, the court dismissed the appeal and cautioned defense counsel against pursuing frivolous appeals that waste judicial resources.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Wiener; Southwick; Duncan
JURISDICTION	Federal
DECIDED	May 3, 2021
DOCKET	No. 20-60524
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from a criminal sentence after guilty plea. The government moved to dismiss based on appeal waiver.
STANDARD OF REVIEW	De novo review of the validity of an appeal waiver.
PRECEDENTIAL VALUE	Unpublished
PARTIES	Rodney Rennie v. United States of America

TOPICS

- criminal procedure
- appellate procedure
- plea bargaining
- sentencing
- standard of review

PRACTICE AREAS

- Criminal Law
- Appellate Procedure

QUESTIONS PRESENTED

1. Whether the appeal waiver in the plea agreement precludes Rennie's appeal of his sentence.

HOLDINGS

1. The appeal waiver is valid and enforceable, and the appeal is dismissed.

KEY QUOTATIONS

“Because the plain language of the waiver applies to his sentencing claim, the motion to dismiss is GRANTED, and the Government’s alternative motion for summary affirmance is DENIED.” (2)

“Counsel for Rennie is CAUTIONED that pursuing an appeal contrary to a valid waiver and without responding to the Government’s invocation of the waiver is a needless waste of judicial resources that could result in sanctions.” (2)

FACTUAL BACKGROUND

Rennie pleaded guilty to conspiracy to possess with intent to distribute 500 grams or more of methamphetamine. He was sentenced to 240 months of imprisonment and five years of supervised release.

PROCEDURAL HISTORY

Rennie pleaded guilty to conspiracy to possess with intent to distribute methamphetamine and was sentenced to 240 months. He appealed. The government moved to dismiss the appeal based on an appeal waiver in the plea agreement.

DISPOSITION

dismissed

CASES CITED

- United States v. Baymon, 312 F.3d 725, 727 (5th Cir. 2002)
- United States v. Portillo, 18 F.3d 290, 292 (5th Cir. 1994)
- United States v. Story, 439 F.3d 226, 231 (5th Cir. 2006)
- United States v. Bond, 414 F.3d 542, 544, 546 (5th Cir. 2005)
- United States v. Gaitan, 171 F.3d 222, 223-24 (5th Cir. 1999)

OPINION

PER CURIAM.

Case: 20-60524 Document: 00515845398 Page: 1 Date Filed: 05/03/2021 United States Court of Appeals for the Fifth Circuit United States Court of Appeals Fifth Circuit FILED No. 20-60524 May 3, 2021 Summary Calendar Lyle W. Cayce Clerk United States of America, Plaintiff—Appellee, versus Rodney Rennie, Defendant—Appellant. Appeal from the United States District

Court for the Southern District of Mississippi USDC No. 2:19-CR-35-2 Before Wiener, Southwick, and Duncan, Circuit Judges.

Per Curiam:* Rodney Rennie pleaded guilty to conspiracy to possess with intent to distribute 500 grams or more of a mixture or substance containing methamphetamine. He was sentenced to 240 months of imprisonment and five years of supervised release.

On appeal, Rennie argues that the district * Pursuant to 5th Circuit Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Circuit Rule 47.5.4. Case: 20-60524 Document: 00515845398 Page: 2 Date Filed: 05/03/2021 No. 20-60524 court erred by applying U.S.S.G. § 2D1.1(b)(5), which provides for a two- level enhancement for an offense involving imported methamphetamine.

Relying on the appeal waiver provision in Rennie's plea agreement, the Government moves to dismiss the appeal. Rennie has indicated that he opposes the motion, but he has not filed a response. We review the validity of an appeal waiver de novo. *United States v. Baymon*, 312 F.3d 725, 727 (5th Cir. 2002).

The waiver provision in Rennie's plea agreement waived his right to appeal the sentence on any ground whatsoever, except for ineffective assistance of counsel. The record shows that the waiver was knowing and voluntary, as Rennie knew he had the right to appeal and that he was giving up that right in the plea agreement. See *United States v. Portillo*, 18 F.3d 290, 292 (5th Cir.

1994). Rennie's opening brief neither mentions the waiver nor explains why the appeal is nevertheless being brought. Once the Government moved to dismiss the appeal based on the appeal waiver, Rennie should have conceded the point or sought to show that the appeal concerned issues that were outside of the terms of the waiver. See *United States v. Story*, 439 F.3d 226, 231 (5th Cir.

2006). Because the plain language of the waiver applies to his sentencing claim, the motion to dismiss is GRANTED, and the Government's alternative motion for summary affirmance is DENIED. See *United States v. Bond*, 414 F.3d 542, 544, 546 (5th Cir. 2005). Counsel for Rennie is CAUTIONED that pursuing an appeal contrary to a valid waiver and without responding to the Government's invocation of the waiver is a needless waste of judicial resources that could result in sanctions.

See *United States v. Gaitan*, 171 F.3d 222, 223-24 (5th Cir. 1999). APPEAL DISMISSED. 2