

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

United States v. Balinda

No. 19-515-cr, United States Court of Appeals for the Second Circuit (September 22, 2020)

SUMMARY

Defendant appealed his 72-month sentence for heroin and methamphetamine conspiracy, arguing the government breached the plea agreement by suggesting a two-level premises enhancement under U.S.S.G. § 2D1.1(b)(12) at sentencing. The Second Circuit held that the government did not breach the agreement because it merely responded to the district court's direct inquiries, as permitted by the plea agreement's carve-out for answering court questions. Because the appeal waiver was enforceable and the government's conduct fell within the agreement's terms, the appeal was dismissed. The court also noted that alleged procedural errors do not constitute an exception to a valid appeal waiver.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Robert D. Sack; Richard C. Wesley; Richard J. Sullivan
JURISDICTION	Federal
DECIDED	September 22, 2020
DOCKET	19-515-cr
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from a judgment of the district court sentencing Balinda after he pleaded guilty to drug conspiracy charges.
STANDARD OF REVIEW	De novo for interpretation of plea agreements; clear error for sentencing enhancements if not waived.
PRECEDENTIAL VALUE	Unpublished
PARTIES	Ismael Balinda v. United States of America

TOPICS

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

PRACTICE AREAS

- Criminal Law
- Sentencing
- Plea Agreements

QUESTIONS PRESENTED

1. Whether the government breached the plea agreement by responding to the district court's inquiries about the sentencing enhancement, thereby rendering the appeal waiver unenforceable.

HOLDINGS

1. The government did not breach the plea agreement because its responses were within the express carve-out in the agreement allowing it to answer court inquiries.

KEY QUOTATIONS

“waivers of the right to appeal a sentence are presumptively enforceable” (3)

“commentary reasonably appears to seek to influence the court in a manner incompatible with the agreement ... notwithstanding formal language of disclaimer” (4)

FACTUAL BACKGROUND

Balinda was convicted of conspiracy to import and distribute one kilogram or more of heroin and 50 grams or more of methamphetamine. He pleaded guilty pursuant to a plea agreement that included an appeal waiver. The presentence investigation report recommended a two-level enhancement under U.S.S.G. § 2D1.1(b)(12) for maintaining a premises for the purpose of manufacturing or distributing a controlled substance. The government did not initially seek the enhancement but responded to the district court's questions about it.

PROCEDURAL HISTORY

Balinda pleaded guilty pursuant to a plea agreement and was sentenced to 72 months' imprisonment. He appealed, arguing that the government breached the plea agreement by failing to object to a PSR recommendation and by responding to the district court's inquiries about a sentencing enhancement, and that the district court erred in applying the enhancement. The Second Circuit dismissed the appeal, holding that the government did not breach the agreement and the appeal waiver was enforceable.

DISPOSITION

dismissed

CASES CITED

- United States v. Burden, 860 F.3d 45 (2d Cir. 2017)
- United States v. Salcido-Contreras, 990 F.2d 51 (2d Cir. 1993)
- United States v. Gomez-Perez, 215 F.3d 315 (2d Cir. 2000)
- United States v. Riera, 298 F.3d 128 (2d Cir. 2002)
- United States v. Colon, 220 F.3d 48 (2d Cir. 2000)
- United States v. Amico, 416 F.3d 163 (2d Cir. 2005)
- United States v. Morgan, 386 F.3d 376 (2d Cir. 2004)

