

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-10823

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

NOEL ARIKE,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Alabama
D.C. Docket No. 1:21-cr-00139-JB-MU-12

Before JORDAN, NEWSOM, and LAGOA, Circuit Judges.

PER CURIAM:

Noel Arike challenges the district court's decision to revoke his pre-sentence supervised release and its denial of an acceptance-of-responsibility reduction at sentencing. In response, the government filed a motion to dismiss this appeal. It asserts that (1) this Court lacks jurisdiction over Arike's challenge to his supervised release because a magistrate judge made that determination and Arike never appealed it to the district court, and (2) the remaining issue on appeal is barred by the appeal waiver in Arike's plea agreement.

The government is correct that Arike never challenged the magistrate judge's revocation of his pre-sentence release before the district court. Under those circumstances, "we lack jurisdiction to hear this appeal." *United States v. Schultz*, 565 F.3d 1353, 1360 (11th Cir. 2009). Moreover, and in any event, Arike's challenge on this front is likely moot because he has since been sentenced. *Cf. Murphy v. Hunt*, 455 U.S. 478, 481 (1982). As a result, we **GRANT** the government's request to dismiss this issue on appeal.

We reject, however, the government's request that we dismiss the remaining issue on appeal. A key part of Arike's challenge to the district court's sentencing determination is that the government breached its plea agreement with him. As our precedent makes clear, "an appeal waiver does not bar a defendant's claim that the government breached [a] plea agreement." *United States v.*

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Hunter, 835 F.3d 1320, 1324 (11th Cir. 2016). Accordingly, we **DENY** the government's request to dismiss Arike's remaining challenge regarding whether the district court correctly denied him an acceptance-of-responsibility sentencing reduction.

As requested, we grant the government 30 days to file a responsive brief regarding the remaining issue relevant to Arike's appeal.