

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 26-10548
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOHN CATO,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Georgia
D.C. Docket No. 5:25-cr-00041-MTT-CHW-1

Before NEWSOM, BRASHER, and ABUDU, Circuit Judges.

PER CURIAM:

John Cato appeals his 180-month sentence for firearms trafficking, in violation of 18 U.S.C. § 933(a)(1) & (b). On appeal, Cato

argues that his sentence is substantively unreasonable. The government moves to dismiss Cato’s appeal, arguing that Cato knowingly and voluntarily waived his right to appeal his sentence. After careful review, we grant the government’s motion and dismiss.

We review the validity and scope of an appeal waiver *de novo*. *King v. United States*, 41 F.4th 1363, 1366 (11th Cir. 2022), *abrogated in part on other grounds by Hunter v. United States*, 146 S. Ct. 1702, 1710 n.2 (2026). Generally, sentence appeal waivers are enforceable if they are made knowingly and voluntarily. *Id.* at 1367. To enforce a waiver, “[t]he government must show that either (1) the district court specifically questioned the defendant concerning the sentence appeal waiver during the [guilty plea] colloquy, or (2) it is manifestly clear from the record that the defendant otherwise understood the full significance of the waiver.” *United States v. Bushert*, 997 F.2d 1343, 1351 (11th Cir. 1993); *see also United States v. Boyd*, 975 F.3d 1185, 1192 (11th Cir. 2020) (noting that the “touchstone for assessing” if a sentence appeal waiver was made knowingly and voluntarily “is whether ‘it was clearly conveyed to the defendant that he was giving up his right to appeal under *most* circumstances’” (alterations adopted) (emphasis in original) (quoting *Bushert*, 997 F.2d at 1352–53)). “We have consistently enforced knowing and voluntary appeal waivers according to their terms.” *United States v. Bascomb*, 451 F.3d 1292, 1294 (11th Cir. 2006). However, we will not enforce a sentence appeal waiver when doing so “would result in a miscarriage of justice—meaning, when it would leave in place the kind of egregious error that would bring the judicial system into disrepute.” *Hunter*, 146 S. Ct. at 1708.

26-10548

Opinion of the Court

3

Cato was charged with two counts of possession and transfer of a machinegun, 18 U.S.C. §§ 922(o) & 924(a)(2) (Counts One and Five); three counts of dealing firearms without a license, 18 U.S.C. § 922(a)(1)(A), 923(a) & 924(a)(1)(D) (Counts Two, Four, and Six), and one count of firearms trafficking, 18 U.S.C. § 933(a)(1) & (b) (Count Three). Pursuant to a written plea agreement, Cato pled guilty to Count Three. The government, in turn, agreed to dismiss the remaining charges. The plea agreement noted that the statutory maximum sentence for Count Three was 15 years imprisonment. The agreement also contained a sentence appeal waiver, which reads as follows:

Although 18 U.S.C. § 3742 authorizes defendants to appeal their sentences under certain circumstances, Defendant knowingly and voluntarily waives any right to appeal Defendant's sentence, including the amount of any restitution imposed as part of Defendant's sentence. Defendant's sentence appeal waiver does not apply if: (1) the [c]ourt imposes a sentence that exceeds the advisory guideline range as that range has been calculated by the [c]ourt at the time of sentencing; (2) the [c]ourt imposes a sentence that exceeds the statutory maximum; or (3) the United States appeals Defendant's sentence under the authority of 18 U.S.C. § 3742(b). Nothing in this agreement shall deprive the United States of its right to appeal Defendant's sentence, as authorized by 18 U.S.C. § 3742(6). If, however, the United States appeals Defendant's sentence pursuant to this statute, Defendant

is released from Defendant's waiver of Defendant's right to appeal altogether. . . .

Defendant understands and acknowledges that the waivers outlined herein may result in the dismissal of any appeal . . . Defendant might file challenging Defendant's conviction or sentence. If Defendant files a notice of appeal . . . notwithstanding this agreement, Defendant agrees that this case shall, upon motion of the United States, be remanded to the Court to determine whether Defendant is in breach of this agreement and, if so, to permit the United States to withdraw from the plea agreement.

Cato and his attorney signed the plea agreement's final page and initialed each page of the agreement, including the pages that contained the appeal waiver.

The district court held a change-of-plea hearing, and Cato was placed under oath and warned of the penalties of perjury. Cato then testified that he was 24 years old, could read and write, was not suffering from illness, and was not under the influence of drugs, alcohol or medication. He also explained that he had not been coerced or threatened into pleading guilty; he was, in fact, guilty of Count Three. The district court explained that Cato would be waiving various trial rights by pleading guilty and Cato confirmed that he understood these rights and was waiving them. He also testified that he understood the elements of the crime and the maximum punishment he faced for his conviction. Next, Cato con-

26-10548

Opinion of the Court

5

firmed that he had reviewed the plea agreement, signing it and initialing each page, and he understood that there were no promises or assurances made to him outside the agreement.

The district court then specifically confirmed that Cato understood the appeal waiver. It noted that the plea agreement contained “a section in which” Cato was “gi[ving] up [his] right to appeal and [his] right to seek review of [his] sentence,” and noted that there were “some exceptions” to that waiver. He also ensured that Cato had discussed “this part” of the agreement with his attorney. The court then explained the three exceptions to the agreement’s sentence appeal waiver, and it explained each of those exceptions. It asked Cato whether he “ha[d] any questions about that?” and Cato responded that he did not. Cato also stated that he was voluntarily giving up his right to appeal “except as stated in the Plea Agreement.”

“There is a strong presumption that the statements” Cato “made during” his change-of-plea “colloquy [we]re true.” *United States v. Medlock*, 12 F.3d 185, 187 (11th Cir. 1994). Given the district court’s thorough explanation of the appeal waiver provision and its detailed recitation of the waiver’s listed exceptions, we are satisfied that “the district court specifically questioned [Cato] concerning the sentence appeal waiver,” *Bushert*, 997 F.2d at 1351, and that “it was clearly conveyed to [Cato] that he was giving up his right to appeal under *most* circumstances,” *Boyd*, 975 F.3d at 1192 (alterations adopted) (quoting *Bushert*, 997 F.2d at 1352–53). The district court also ensured that Cato agreed to its description of the

waiver and explained its conclusion, on the record, that Cato was waiving his right to appeal and had done so knowingly and voluntarily. Under these circumstances, we will apply the waiver according to its terms. *Bascomb*, 451 F.3d at 1294.

Cato’s sentencing challenge—to the substantive reasonableness of his sentence—falls within the terms of his waiver and does not implicate any of the exceptions. *See United States v. Hardman*, 778 F.3d 896, 900 (11th Cir. 2014) (“The language of a plea agreement should be given its ordinary and natural meaning unless the parties indicate otherwise.”). Cato was sentenced within his advisory guideline range; the sentence he received did not exceed the maximum penalties for his offense; and the government did not appeal. Thus, no exception applies.

Nor would enforcing the waiver in this case result in a miscarriage of justice. *See Hunter*, 146 S. Ct. at 1708. We acknowledge that three Supreme Court Justices recently discussed how a substantively unreasonable sentence might amount to a miscarriage of justice and, therefore, justify non-enforcement of an appeal waiver. *See id.* at 1721 (Gorsuch, J., concurring)¹ (“A miscarriage of justice would seem to arise, as well, when a district court metes out punishment that is so substantively unreasonable that it would fail under the ‘deferential abuse-of-discretion standard’ that appellate courts already apply in sentencing challenges.” (quoting *Gall v.*

¹ Justice Gorsuch’s concurrence was joined by Justices Sotomayor and Jackson. *See* 146 S. Ct. at 1715.

26-10548

Opinion of the Court

7

United States, 552 U.S. 38, 41, 51–52 (2007)). Even still, as the majority in *Hunter* explained, an error that amounts to a miscarriage of justice “must be obvious—not one a judge could reasonably make.” *Id.* at 1713 (majority opinion). Cato’s arguments about the substantive reasonableness of his sentence do not show such an obvious error; the district court sentenced Cato within his guidelines range, discussed mitigating and aggravating factors, and focused, reasonably, on Cato’s offense conduct—namely, his “particularly” dangerous “spree of selling guns and high-capacity magazines.” See generally *United States v. Butler*, 39 F.4th 1349, 1355 (11th Cir. 2022) (explaining that, while a district court must consider all relevant sentencing factors, “the weight given to each factor is committed to the sound discretion of the district court,” and it may attach great weight to one factor over the others). Considering the record, which includes the district court’s discussion of these various relevant factors, and because a sentence appeal waiver poses a “substantial barrier” to our review of the merits, *id.* at 1714, we discern no miscarriage of justice. Accordingly, we will enforce the parties’ agreement and dismiss Cato’s appeal.²

DISMISSED.

² The text of the waiver permits the government to request remand so that the district court can determine whether Cato breached the agreement and allow the government to withdraw. That said, the government has not requested that relief, so we do not consider it further.