

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 26-10615
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KENNETH L. PHILLIPS,

a.k.a. Kenneth L. Phillips,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 2:23-cr-00332-MHH-GMB-1

Before ROSENBAUM, ANDERSON, and WILSON, Circuit Judges.

PER CURIAM:

Kenneth Phillips appeals his sentence of 24 months' imprisonment, after pleading guilty to one count of conspiracy to commit

wire fraud. He argues that the district court erred in calculating the amount of loss attributable to his conduct, and that his sentence is greater than necessary to serve the purposes of sentencing under 18 U.S.C. § 3553(a). The government has moved to dismiss the appeal based on the appeal waiver in Phillips’s plea agreement. We grant the government’s motion and dismiss the appeal.

I.

Phillips entered into a plea agreement with the government in which he agreed to plead guilty to a one-count information charging him and his daughter, Danielle Phillips, with conspiracy to commit wire fraud in connection with coronavirus relief funds. In exchange, the government agreed to recommend a reduction for acceptance of responsibility and a sentence within the guideline range calculated by the court at sentencing.

The plea agreement also included a waiver of Phillips’s “right to appeal [his] conviction and/or sentence in this case.” Under the waiver, Phillips reserved the right to contest (a) any sentence that exceeded the statutory maximum, (b) any sentence that exceeded the guideline range determined by the court at sentencing, and (c) ineffective assistance of counsel. Phillips and his attorney signed the agreement under acknowledgments stating that Phillips had read and understood the terms of the agreement.

During the plea hearing, the district court went over the terms of the plea agreement, including the appeal waiver. The court listed the three grounds reserved for appeal and explained that, “[o]ther than those three grounds, if you plead guilty pursuant

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to this plea agreement, you will have waived your right to challenge in the Court of Appeals or in this court your sentence.” Phillips confirmed to the court that he had discussed the appeal-waiver provision with his attorney, that he understood the rights he was waiving, and that he was giving up those rights voluntarily. The district court accepted the guilty plea as knowing and voluntary and adjudged Phillips guilty of conspiracy to commit wire fraud.

Before sentencing, a probation officer prepared a presentence investigation report (“PSR”) that recommended a guideline range of 41 to 51 months based on a total offense level of 22 and a criminal-history category of I. In calculating the offense level, the PSR applied an 18-level enhancement for an intended loss amount that exceeded \$3,500,000.

At sentencing, the district court overruled Phillips’s objection to the loss amount and adopted the PSR’s guideline calculations. The court ultimately imposed a sentence of 24 months’ imprisonment.

In January 2026, Phillips filed a motion to vacate under 28 U.S.C. § 2255 arguing that his counsel was ineffective for (1) failing to file a timely notice of appeal and (2) failing to investigate and present evidence of legitimate spending by his company to refute the loss amount. The district court found that the first claim was moot because Phillips had submitted the equivalent of a timely notice of appeal by moving for appointment of appeal counsel within 14 days of the judgment. And in light of the direct appeal, the court dismissed the second claim without prejudice, citing the rule that

“a defendant may not seek collateral relief while his direct appeal is pending.” *United States v. Khoury*, 901 F.2d 975, 976 (11th Cir. 1990). Thus, we address Phillips’s appeal of his sentence and the validity of the appeal waiver.

II.

We review de novo the validity and scope of an appeal-waiver provision in a plea agreement. *King v. United States*, 41 F.4th 1363, 1366 (11th Cir. 2022). Sentence appeal waivers are enforceable if they are made knowingly and voluntarily. *Id.* at 1367. “The government must show that either (1) the district court specifically questioned the defendant concerning the sentence appeal waiver during the Rule 11 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). “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).

The Supreme Court recently confirmed that appeal waivers are enforceable unless they “would result in a miscarriage of justice.” *Hunter v. United States*, 608 U.S. ___, 146 S. Ct. 1702, 1713 (2026). Under this standard, “[t]he waiver may be set aside only if the sentence is marred by the kind of egregious error that would bring the judicial system into disrepute.” *Id.*

Hunter explains that it’s “inevitable that mistakes will occur” in the “calculation of a Sentencing Guidelines range and the mandatory consideration of multiple sentencing factors,” and that

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“[s]uch standard-fare errors in misapplying sentencing law cannot cancel an appeal waiver.” *Id.* But an appeal waiver is unenforceable in “extreme cases,” including when (1) the sentence exceeds the statutory maximum; (2) the sentence is “infected with a blatant constitutional error,” such as consideration of “a constitutionally impermissible factor (like race)”; or (3) “the judge refused to hold a hearing consonant with basic principles of law.” *Id.* at 1714.

Here, the government has shown that the appeal waiver in Phillips’s plea agreement is enforceable and bars this appeal. The record shows that the district court specifically questioned Phillips about the waiver during the plea colloquy, and that he otherwise understood the full significance of the waiver and voluntarily agreed to it. *See Bushert*, 997 F.2d at 1351. And the terms of the waiver do not permit Phillips to appeal the calculation of his guideline range or the reasonableness of his below-guideline sentence.

Phillips does not dispute these points. Instead, he argues that the waiver is unenforceable under *Hunter*. But he has not shown that his “sentence is marred by the kind of egregious error that would bring the judicial system into disrepute.” *Hunter*, 146 S. Ct. at 1713. Rather, he challenges the district court’s “calculation of [his] Sentencing Guidelines range” and its “consideration of multiple sentencing factors,” which are “standard-fare errors in misapplying sentencing law” that “cannot cancel an appeal waiver.” *Id.*

Phillips argues that “blatant constitutional error,” or a failure of minimal civil procedure, occurred because counsel failed to provide constitutionally effective assistance in relation to the loss

amount. He concedes, however, that he “does not raise the ineffectiveness issue at the instant appeal because this Court will not generally consider claims of ineffective assistance of counsel raised on direct appeal.” *See United States v. Puentes-Hurtado*, 794 F.3d 1278, 1285 (11th Cir. 2015) (“We generally do not address ineffective assistance of counsel claims on direct appeal[.]”). Nor is the record “sufficiently developed to allow us to address the ineffective assistance of counsel claim.” *Id.*

Accordingly, Phillips’s argument that the district court’s loss determination was affected by his counsel’s ineffective assistance is not properly before us. So the appeal waiver’s exception for claims of ineffective assistance does not apply here. Notwithstanding his assertions on appeal, we see nothing about these circumstances that would prevent Phillips from pursuing his claim of ineffective assistance under § 2255 following this direct appeal. *See id.*

Because Phillips has not established that enforcement of the appeal waiver would result in a miscarriage of justice, and the record otherwise shows that the waiver was knowing and voluntary, we **GRANT** the government’s motion and **DISMISS** the appeal.

DISMISSED.