NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 26-11155
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BRIAN ONEAL GUICE,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Alabama
D.C. Docket No. 2:25-cr-00400-ECM-JTA-1

Before ROSENBAUM, NEWSOM, and BRASHER, Circuit Judges.

PER CURIAM:

Brian Guice appeals his sentence of 174 months of imprisonment after pleading guilty to possession of a firearm by a convicted felon. *See* 18 U.S.C. § 922(g)(1). He argues that the district court

erred in applying a cross-reference for attempted murder under the Sentencing Guidelines, *see* U.S.S.G. § 2K2.1(c)(1), 2X1.1, & 2A2.1, and that his 174-month sentence is greater than necessary to serve the purposes of sentencing. The government has moved to dismiss the appeal based on the appeal waiver in Guice's plea agreement.

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). The "touchstone" for determining a waiver's enforceability "is whether it was clearly conveyed to the defendant that he was giving up his right to appeal under most circumstances." *United States v. Boyd*, 975 F.3d 1185, 1192 (11th Cir. 2020).

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.*

The Court explained 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 "[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 Guice's plea agreement is enforceable and bars this appeal. Under a section titled, "The Defendant's Waiver of Appeal and Collateral Attack," Guice "expressly waive[d] any and all rights conferred by 18 U.S.C. § 3742 to appeal the conviction, sentence, or order of forfeiture." The waiver provided an exception for claims of ineffective assistance of counsel or prosecutorial misconduct, and Guice would be released from the waiver if the government appealed. Guice initialed each page of the plea agreement, and he and his attorney signed the final page of the agreement.

Then, at the hearing to decide whether to accept Guice's guilty plea, a magistrate judge questioned him about the plea agreement. Guice confirmed to the judge that he had read the agreement and discussed it with his attorney. The prosecutor then summarized the "essential terms" of the plea agreement, including the appeal-waiver provision. Guice advised the court that he understood the provisions of the plea agreement and wished to enter

into the agreement of his own volition. Guice further told the magistrate judge that he understood that "by entering into the plea agreement we have discussed and entering a plea of guilty, [he] will have waived or given up [his] right to appeal or collaterally attack all or part of [his] sentence." The magistrate judge found that Guice's guilty plea was knowing and voluntary and supported by an independent factual basis, and the district court adopted the magistrate judge's recommendation to accept the guilty plea without objection by either party.

In sum, the record shows that the magistrate judge and the prosecutor "effectively conveyed to [Guice] that he was giving up his right to appeal his sentence under most circumstances," *Boyd*, 975 F.3d at 1192, and that he otherwise understood the full significance of the waiver and voluntarily agreed to it, *see Bushert*, 997 F.2d at 1351.

Guice's challenges to the calculation of the guideline range and the reasonableness of his sentence are barred by the terms of his appeal waiver. Nor do these arguments implicate the kind of "egregious error that would bring the judicial system into disrepute," such that we could set aside the waiver. *Hunter*, 146 S. Ct. at 1713. Rather, his argument on appeal concerns "standard-fare errors in misapplying sentencing law," which "cannot cancel an appeal waiver." *Id.*

For these reasons, we **GRANT** the government's motion and **DISMISS** the appeal.