

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

October 24, 2007

No. 07-30166
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

KENNETH GREEN

Defendant-Appellant

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:05-CR-280-1

Before JOLLY, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:*

Kenneth Green pleaded guilty to possession of a firearm by a felon, and the district court varied from the Guidelines and sentenced Green to 60 months of imprisonment. Green argues that the district court's refusal to allow counsel to comment on sentencing matters after the court announced its intention to impose, sua sponte, a non-guidelines sentence violated Federal Rule of Criminal Procedure 32(i)(1)(C) and the Due Process Clause. The Government seeks enforcement of the sentence-appeal waiver in the plea agreement.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Our review of the record shows that Green's sentence-appeal waiver was knowing and voluntary and that, under the plain language of the plea agreement, the waiver applies to the circumstances at hand. See *United States v. Burns*, 433 F.3d 442, 445-46 (5th Cir. 2005); *United States v. Bond*, 414 F.3d 542, 544 (5th Cir. 2005). Green's argument that the asserted sentencing error is not subject to waiver is not supported by relevant authority and is not persuasive. Accordingly, Green's appeal waiver bars review of the issues he seeks to raise on appeal.

AFFIRMED.