

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

April 30, 2009

No. 08-30664
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

JEFFERY D ELLIS

Defendant-Appellant

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:05-CR-6-1

Before JONES, Chief Judge, and JOLLY and ELROD, Circuit Judges.

PER CURIAM:*

Jeffery D. Ellis pleaded guilty to conspiracy to possess with the intent to distribute and to distribute 50 grams or more of a mixture containing a detectable amount of methamphetamine and aiding and abetting the conspiracy. 21 U.S.C. §§ 846, 841; 18 U.S.C. § 2. He now seeks to appeal his 108-month guidelines sentence on the basis that changes to the guidelines calculations and

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

applicable guidelines sentencing range were untimely. The Government argues that Ellis waived this argument as part of the appeal waiver in his plea agreement.

The record reflects that Ellis knowingly and voluntarily waived his right to appeal his sentence except in limited circumstances not present in the instant appeal. *See United States v. McKinney*, 406 F.3d 744, 746 (5th Cir. 2005). Because the waiver is valid, the appeal is dismissed as frivolous. *See* 5TH CIR. R. 42.2.

Counsel John Harvey Craft is warned that pursuing an appeal despite a valid appeal waiver provision in the plea agreement and failing to address the waiver in a reply brief after it was raised by the Government in its brief is a needless waste of judicial resources and will invite sanctions. *See United States v. Gaitan*, 171 F.3d 222, 224 (5th Cir. 1999).

APPEAL DISMISSED; SANCTION WARNING ISSUED.