

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 99-11116  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

THOMAS NOTO,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:99-CR-34-ALL-L  
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August 23, 2000

Before KING, Chief Judge, and POLITZ and WIENER, Circuit Judges.

PER CURIAM:\*

Thomas Noto argues that the district court erred in adjusting his offense level eight levels pursuant to U.S.S.G. § 2B1.1(b)(1). However, Noto knowingly and voluntarily waived his right to appeal his sentence in his plea agreement, except for two expressly reserved issues. See United States v. Melancon, 972 F.2d 566, 568 (5th Cir. 1992). Under our precedent, which we are not free to discard, Noto's waiver is effective. See FDIC v. Abraham, 137 F.3d 264, 268 (5th Cir. 1998) ("[w]e are, of course, a strict stare decisis court").

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Noto argues that the district court's § 2B1.1(b)(1) enhancement is really an appealable upward departure under the plea agreement. Because he has failed to provide any legal or factual analysis for this argument, it is waived. See American States Ins. Co. v. Bailey, 133 F.3d 363, 372 (5th Cir. 1998).

This appeal is without arguable merit and thus frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Accordingly, it is DISMISSED. 5th Cir. R. 42.2.