

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-30276
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAMES ARNOLD, III,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 00-CR-207-1-F

January 14, 2002
Before GARWOOD, BARKSDALE, and DeMOSS, Circuit Judges.

PER CURIAM:*

James Arnold, III, wishes to appeal the sentence imposed following his plea of guilty to one count of bank robbery in violation of 18 U.S.C. § 2113(a). His notice of appeal was filed late and the district court denied his motion for leave to file a late notice of appeal.

Arnold argues that the district court erred in denying his

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 R. 47.5 the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

motion to file a late notice of appeal because it conducted an incomplete inquiry into whether the delay was caused by excusable neglect. Arnold seeks only to challenge the district court's application of the Sentencing Guidelines and the resultant sentence.

Arnold in his signed written plea agreement made an express, informed and knowing waiver of his right to appeal except in the case where the sentence imposed exceeded the statutory maximum or where the sentence "constitutes an upward departure from the Guideline range deemed most applicable by the sentencing court." This was also fully explained to him by the district court at the Rule 11 hearing. Because neither of the two stated conditions are implicated by the sentence imposed by the district court, this court is precluded from reviewing this issue. *See United States v. Gonzalez*, 259 F.3d 355, 358 (5th Cir. 2001). Because the issue he seeks to raise on appeal is precluded from review, remand for consideration of the timeliness of the appeal notice would be futile. *See United States v. Alvarez*, 210 F.3d 309, 310 (5th Cir. 2000).

APPEAL DISMISSED