

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-20243
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BILLY ARRINGTON,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-99-CR-721-2

January 14, 2003

Before BARKSDALE, DEMOSS, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Billy Arrington ("Arrington") appeals the district court's judgment resentencing Arrington to 151 years' imprisonment upon his guilty-plea conviction for money laundering. The district court resentenced Arrington after he successfully sought relief pursuant to 28 U.S.C. § 2255. Arrington argues that the district court erred because it did not resentence him under the current version of the United States Sentencing Guidelines. The Government has

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

moved to dismiss the appeal because Arrington's plea agreement contained an appeal waiver. Arrington contends that the waiver is unenforceable because the Government breached the plea agreement.

Arrington has not met his burden to show that the Government's argument at sentencing in support of an obstruction-of-justice enhancement, which carried with it a denial of a downward adjustment for acceptance of responsibility, breached the plea agreement. See United States v. Wittie, 25 F.3d 250, 262 (5th Cir. 1994). The Government's conduct was not inconsistent with a reasonable understanding of the plea agreement. See United States v. Valencia, 985 F.2d 758, 761 (5th Cir. 1993). This case is distinguishable from United States v. Keresztury, 293 F.3d 750 (5th Cir. 2002), because in this case the Government's conduct did not fall within the unambiguous terms of Arrington's plea agreement.

The motion to dismiss is GRANTED. All other outstanding motions are DENIED. This appeal is DISMISSED.