

April 21, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-51205
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RONALD JAY CLIFTON,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. MO-02-CR-48-ALL

Before JOLLY, JONES, and SMITH, Circuit Judges.

PER CURIAM:*

Ronald Jay Clifton pleaded guilty to counts one and two of an information charging him with conspiracy to commit fraud and securities fraud. Clifton has appealed, raising issues related to the district court's upward departure from the guideline imprisonment range. In his plea agreement, Clifton waived the right to raise these issues on appeal and the record reflects that the waiver was knowing and voluntary. See United States v. Melancon, 972 F.2d 566, 567-68 (5th Cir. 1992). We caution counsel that the assertion of issues on appeal that are plainly

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

barred by a plea agreement and the failure to explain in briefing why the defendant's issues are not waived invites the imposition of a sanction. See United States v. Martinez, 263 F.3d 436, 438 (5th Cir. 2001). The appeal is

DISMISSED.