

March 17, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-20523
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KENNETH HAROLD HARRINGTON,

Defendant-Appellant.

Appeals from the United States District Court
for the Southern District of Texas
USDC No. H-02-CR-707-ALL

Before REAVLEY, JOLLY and DENNIS, Circuit Judges.

PER CURIAM:*

Kenneth Harold Harrington appeals from his sentence for two counts of armed bank robbery in violation of 18 U.S.C. § 2113(a), (d) and one count of using and carrying a firearm during and in relation to a crime of violence in violation of 18 U.S.C. § 924(c)(1)(A). Harrington argues that he may challenge his sentence despite his waiver of his right to appeal.

This court reviews de novo whether a waiver of appeal bars an appeal. United States v. Baymon, 312 F.3d 725, 727 (5th Cir.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

2002). Harrington's sentence did not exceed the statutory maximum, and the Government had requested that the district court depart upward from the guideline range. Neither of the two exceptions to the waiver of appeal applies in this case. Harrington knowingly and voluntarily waived his right to appeal his sentence. See United States v. Portillo, 18 F.3d 290, 292-93 (5th Cir. 1994); see also United States v. Dees, 125 F.3d 261, 269 (5th Cir. 1997). Harrington's waiver of appeal is enforceable and bars the present appeal.

APPEAL DISMISSED.