

December 12, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-41671
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

THERESA ANN TAYLOR,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:04-CR-18-1

Before HIGGINBOTHAM, BENAVIDES, and DENNIS, Circuit Judges

PER CURIAM:*

Theresa Ann Taylor appeals her sentence following her conviction of one charge of possession of stolen mail. The Government has filed a motion to dismiss the appeal based on the appellate-waiver clause found in Taylor's plea agreement. Taylor argues that the clause does not preclude her appeal. She notes that she preserved her right to appeal a sentence that was the result of an upward departure from the pertinent Guidelines range. She argues that the district court so departed by

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

sentencing her based on a Guidelines range that was calculated using facts that were neither admitted by her nor found by a jury.

This court will dismiss an appeal that is precluded by a valid waiver. See United States v. McKinney, 406 F.3d 744, 747 (5th Cir. 2005). There is nothing in the record to indicate that Taylor's waiver was not knowing and voluntary. Moreover, the plain language of the waiver covers the claims that she seeks to present in this appeal. Her arguments to the contrary are unavailing. See id. at 746-47. Consequently, the Government's motion to dismiss the appeal is GRANTED, and the appeal is DISMISSED.