

April 27, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-10466
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MARK A SMITH

Defendant - Appellant

Appeals from the United States District Court
for the Northern District of Texas
USDC No. 7:05-CR-3

Before KING, HIGGINBOTHAM, and GARZA, Circuit Judges.

PER CURIAM:*

Mark A. Smith appeals from the sentence imposed following his guilty plea conviction for being a felon in possession of a firearm. Smith's plea agreement contained an appeal waiver, which the Government seeks to enforce. Smith's attempt to construe the sentencing court's statements regarding his right to appeal as an interpretation of the appeal waiver provision lacks merit. The sentencing court's erroneous statements regarding Smith's right to appeal did not negate an otherwise knowing and voluntary waiver. See United States v. Gonzalez, 259 F.3d 355,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

358 (5th Cir. 2001). Moreover, the Government has not waived enforcement of that waiver. See United States v. Acquaye, 452 F.3d 380, 382 (5th Cir. 2006); United States v. Melancon, 972 F.2d 566, 568 (5th Cir. 1992). Accordingly, Smith's appeal seeking to challenge the district court's application of a U.S.S.G. § 2K2.1(b)(5) adjustment is barred by his appeal waiver. See Melancon, 972 F.2d at 568.

AFFIRMED.