

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 13-10636
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 11, 2014

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DAVID WAYNE HATCHER,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:12-CR-96-1

Before JOLLY, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:*

David Wayne Hatcher appeals the restitution order imposed in connection with his guilty-plea conviction for two counts of child pornography. He argues that the appeal-waiver provision in his plea agreement does not bar this appeal because he is challenging a restitution order, which results in a sentence exceeding the statutory maximum. Regarding the restitution order, Hatcher contends that the district court erred by not requiring the Government

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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to prove that the victim's losses under 18 U.S.C. § 2259(b)(3)(A)-(E) were proximately caused by his conduct. The Government has moved for summary affirmance, asserting that Hatcher's argument is foreclosed by circuit precedent.

As Hatcher acknowledges, his challenge to the restitution order is foreclosed by our recent decision in *In re Amy Unknown*, 701 F.3d 749, 762 (5th Cir. 2012) (en banc), *cert. granted*, *Paroline v. United States*, 133 S. Ct. 2886 (2013), wherein we held that the types of losses listed in § 2259(b)(3)(A)-(E) do not require a finding of proximate causation. Hatcher raises the issue to preserve it for further review. Because Hatcher's only appellate issue is foreclosed, we pretermitted whether Hatcher's appeal is barred by his appeal waiver. *See United States v. Story*, 439 F.3d 226, 230-31 (5th Cir. 2006).

The Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED. The Government's alternative motion for an extension of time to file a brief is DENIED as unnecessary.