

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

No. 13-31197
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

February 4, 2015

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

BRANDON J. THOMAS,

Defendant-Appellant

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:10-CR-206-1

Before DAVIS, CLEMENT, and COSTA, Circuit Judges.

PER CURIAM:*

Brandon J. Thomas appeals the 90-month term of imprisonment imposed on resentencing for his conviction for possession with intent to distribute 50 grams or more of cocaine base. Thomas argues that the district court erroneously based the upward variance on his prior involvement in dog fighting and thus his sentence is greater than necessary to comply with the purposes set forth in 18 U.S.C. § 3553(a)(2).

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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In response to Thomas's challenge to the substantive reasonableness of his sentence, the Government argues, among other things, that this court should dismiss Thomas's appeal based upon the plea agreement's appeal waiver. Pursuant to the terms of the waiver, Thomas waived the right to directly appeal his sentence on any ground, reserving only the right to challenge any sentence imposed in excess of the statutory maximum; this waiver includes the instant substantive reasonableness challenge. Because the appeal waiver was knowing and voluntary and because the Government seeks the enforcement of the appeal waiver, the appeal is dismissed. *See United States v. Walters*, 732 F.3d 489, 491 (5th Cir. 2013), *cert. denied*, 134 S. Ct. 1349 (2014).

APPEAL DISMISSED.