

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

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No. 13-40792  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

May 29, 2014

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

v.

CEDRICK FOWLER,

Defendant–Appellant.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 9:12-CR-27-2

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Before WIENER, OWEN, and HAYNES, Circuit Judges.

PER CURIAM:\*

Cedrick Fowler appeals the 245-month sentence imposed following his guilty plea conviction for conspiracy to possess with intent to distribute 5 kilograms or more of cocaine. Fowler argues that the 2-level dangerous weapon enhancement, pursuant to U.S.S.G. § 2D1.1(b)(1), was not warranted because the evidence reflects that he was never seen physically possessing a firearm. He contends that the appeal waiver in his plea agreement does not

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\* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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preclude him from raising this issue on appeal because he did not receive a fair sentencing hearing.

The Government moves for summary dismissal of the appeal because Fowler's appeal is barred by the waiver of appeal in the plea agreement and also because Fowler failed to file a timely notice of appeal. In the alternative, the Government requests an extension of time to file its appellate brief.

The Government's motion is well-taken on both grounds. Fowler's notice of appeal was not timely filed, and when the Government objects on that ground, this court must enforce this claims-processing rule. *See Eberhart v. United States*, 546 U.S. 12, 18 (2005). Even if we overlooked the untimeliness of the notice of appeal, the record reflects that Fowler knowingly and voluntarily waived his right to appeal his sentence, *see United States v. Portillo*, 18 F.3d 290, 292 (5th Cir. 1994), and that his argument is barred by the appeal waiver. Therefore, the Government's motion for summary dismissal is GRANTED, and the appeal is DISMISSED. The Government's alternative motion to extend the time to file its brief is DENIED as moot.