

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

No. 16-60362
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 12, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

OSCAR MARTINEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 1:16-CR-12-1

Before WIENER, DENNIS, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Oscar Martinez pled guilty pursuant to a written plea agreement to conspiracy to distribute methamphetamine, and the district court sentenced him to 240 months of imprisonment. He contends that the district court erred when it increased his offense level by two levels pursuant to U.S.S.G. § 2D1.1(b)(1) and an additional two levels pursuant to § 2D1.1(b)(5). He further argues that the district court failed to properly weigh the 18 U.S.C.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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§ 3553(a) sentencing factors. The Government responds by moving to dismiss the appeal or, alternatively, for summary affirmance based upon the appeal waiver in Martinez's plea agreement.

This court reviews the validity of an appeal waiver *de novo*. See *United States v. Baymon*, 312 F.3d 725, 727 (5th Cir. 2002). We rely solely on the record before us. Cf. *United States v. Corbett*, 742 F.2d 173, 177 (5th Cir. 1984). The record establishes that Martinez knowingly and voluntarily agreed to the appeal waiver, and the record rebuts his claims that the Government breached the agreement. Thus, the appeal waiver is enforceable. See *United States v. Portillo*, 18 F.3d 290, 292 (5th Cir. 1994). Further, Martinez's challenge to his sentence does not fall within the only exception stated in the appeal waiver, which concerns ineffective assistance of counsel. See *United States v. Bond*, 414 F.3d 542, 544 (5th Cir. 2005).

The Government's motion to dismiss the appeal is GRANTED. Its alternative request for summary affirmance is DENIED as moot.

APPEAL DISMISSED.