

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

United States Court of Appeals
Fifth Circuit

FILED

March 5, 2020

Lyle W. Cayce
Clerk

No. 19-50416
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

GUADALUPE PINA-HERNANDEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:18-CR-3588-1

Before OWEN, Chief Judge, and SOUTHWICK and WILLETT, Circuit Judges.

PER CURIAM:*

Guadalupe Pina-Hernandez was charged with assault of a federal officer and inflicting bodily injury, in violation of 18 U.S.C. § 111(a) and (b) (Count 1) and attempted illegal reentry after removal, in violation of 8 U.S.C. § 1326 (Count 2). Pina-Hernandez entered into a plea agreement in which he agreed to plead guilty to Count 1. The district court sentenced him to 51 months of

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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imprisonment, which was at the low end of the guidelines range, and it ordered three years of nonreporting supervised release. Pina-Hernandez appealed.

Pina-Hernandez argues that the district court erred in applying U.S. SENTENCING GUIDELINES MANUAL § 2A2.2(a) (U.S. SENTENCING COMM'N 2019), the aggravated assault guideline, based on the predicate offense of attempted illegal reentry. He contends that under *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), the removal order supporting his prior deportation was defective, and therefore he could only have been convicted of the misdemeanor offense of illegal entry. He acknowledges that his *Pereira* argument is foreclosed by *United States v. Pedroza-Rocha*, 933 F.3d 490, 493-98 (5th Cir. 2019), *as revised* (Aug. 29, 2019), *petition for cert. filed* (U.S. Nov. 6, 2019) (No. 19-6588), and *Pierre-Paul v. Barr*, 930 F.3d 684, 688-691 (5th Cir. 2019), *petition for cert. filed* (U.S. Dec. 16, 2019) (No. 19-779), but he raises it to preserve the issue for further review.

The Government points out that Pina-Hernandez knowingly and voluntarily waived the right to appeal his sentence on “any ground” as part of his plea agreement. Pina-Hernandez did not acknowledge the existence of the appeal waiver in his opening brief, and he did not file a reply.

The issue Pina-Hernandez seeks to raise related to the application of § 2A2.2(a) is a sentencing issue and falls squarely within the broad waiver of his right to appeal. Based on the record, Pina-Hernandez’s appeal waiver was knowing and voluntary and, therefore, is enforceable. *See United States v. Higgins*, 739 F.3d 733, 736 (5th Cir. 2014) (citing *United States v. Bond*, 414 F.3d 542, 544 (5th Cir. 2005)); *see also* FED. R. CRIM. P. 11(b)(1)(N). Moreover, even if he could raise the issue on appeal, as Pina-Hernandez acknowledges in his brief, his argument is foreclosed by this court’s recent decisions in *Pedroza-Rocha* and *Pierre-Paul*. Accordingly, Pina-Hernandez’s appeal is DISMISSED.

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Counsel is cautioned that the filing of an appeal contrary to a valid waiver is a needless waste of judicial resources and could result in sanctions. *See United States v. Gaitan*, 171 F.3d 222, 223-24 (5th Cir. 1999).