

United States Court of Appeals for the Fifth Circuit

No. 22-50316
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

April 10, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DANIEL VESA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:19-CR-193-1

Before WIENER, ELROD, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Defendant-Appellant Daniel Vesa pleaded guilty to production of child pornography and was sentenced to 360 months of imprisonment. He appeals, challenging the application of the five-level upward adjustment under U.S.S.G. § 4B1.5(b). The government seeks enforcement of the appeal waiver provision in Vesa's plea agreement.

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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We review *de novo* whether the appeal waiver in Vesa’s plea agreement bars this appeal. *United States v. Keele*, 755 F.3d 752, 754 (5th Cir. 2014). Vesa does not challenge the validity of his guilty plea or plea agreement. *See United States v. Bond*, 414 F.3d 542, 544 (5th Cir. 2005). Although Vesa notes the reservation of various rights, the plea agreement’s wording plainly shows that those rights apply only before the imposition of a sentence and that he “waive[d] the right to appeal [his] conviction or sentence on any ground.” A review of the record reveals that the appeal waiver set forth in Vesa’s plea agreement applies to the issue in this case. *See United States v. Martinez*, 263 F.3d 436, 437–38 (5th Cir. 2001).

DISMISSED.¹

¹ Counsel for Vesa is CAUTIONED that pursuing an appeal contrary to a valid waiver and without responding to the government’s invocation of the waiver is a needless waste of judicial resources that could result in sanctions. *See United States v. Gaitan*, 171 F.3d 223 (5th Cir. 1999).