

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-8146  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BILLY GENE MALONE, JR.,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. W-91-CR-133  
- - - - -

March 19, 1993

Before KING, DAVIS, and SMITH, Circuit Judges.

PER CURIAM:\*

Billy Gene Malone, Jr. appeals his sentence for distribution of crack cocaine within 1000 feet of a playground under 21 U.S.C. §§ 841(a)(1) and 860(a). Malone pleaded guilty pursuant to a plea agreement in which he waived his right "to appeal his sentence on any ground" and his right "to contest his sentence or the manner in which it was determined in any postconviction proceeding" unless the district court would depart upward from the sentencing range. The district court sentenced Malone within

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\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

the guideline range.

"[A] defendant may, as part of a valid plea agreement, waive his statutory right to appeal his sentence." United States v. Melancon, 972 F.2d 566, 568 (5th Cir. 1992). "[T]he waiver must be informed and voluntary." Id. at 567.

Malone and his attorney signed the plea agreement. At arraignment, the Government informed the district court of the plea agreement, stating that Malone "agreed to waive his right to appeal his sentence in this case, save and except that he may appeal an upward departure." Malone stated that this is what he understood the plea agreement to be.

Malone does not dispute the voluntariness of his plea. He argues, however, that paragraph two of the plea agreement implies that the Government agreed "not to use any information supplied by Malone against him." Because he fails to expressly contend that the Government breached the agreement, his argument is only another attack on the manner in which his sentence was determined, an issue he expressly waived his right to appeal.

Because Malone fails to argue or show that his waiver of the right to appeal was invalid, this appeal is DISMISSED.