

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-8334
Conference Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee,

versus

WILLIAM MAHANEY,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC A-91-CR-92

- - - - -
March 18, 1993

Before KING, HIGGINBOTHAM, AND DAVIS, Circuit Judges.

PER CURIAM:*

A defendant may waive his right to appeal a sentence so long as that waiver is informed and voluntary. United States v. Melancon, 972 F.2d 566, 567 (5th Cir. 1992). There is ample evidence in this case that Mahaney's waiver was informed and voluntary and Mahaney does not argue to the contrary. Instead, he seeks reversal of Melancon.

In Melancon the Court identified the right to appeal as a statutory right and observed that a defendant may waive both

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

constitutional and statutory rights as part of a plea agreement. Melancon, 972 F.2d at 567. As one panel cannot overrule another, Melancon is binding. See United States v. Eckford, 910 F.2d 216, 220 (5th Cir. 1990).

The plea agreement in question allowed the defendant to appeal departures and not adjustments to the sentence. Adjustments and departures are different sentencing options and represent different policy considerations. See U.S.S.G. Ch.1, intro., ¶ 4(b) (quoting 18 U.S.C. § 3553(b)); U.S.S.G. Ch. 3, Pts. A-E, Ch. 5, Pt. K.

A two-level upward adjustment for an aggravating role in the offense under U.S.S.G. § 3B1.1 is not a departure and Mahaney was not entitled under the plea agreement to appeal this determination by the district court. The sentence was consistent with the plea agreement and correctly applied the guidelines. The district court's sentence is AFFIRMED.