

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-8311  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHARLES ARTHUR JOHNSON,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. P-92-CR-97-2  
- - - - -  
(October 29, 1993)

Before POLITZ, Chief Judge, and SMITH and WIENER, Circuit Judges.

PER CURIAM:\*

Charles Arthur Johnson pleaded guilty pursuant to a plea agreement in which he waived his right to appeal all issues related to the sentencing guidelines unless there is a substantial departure upwards or to contest the sentence in a post-conviction proceeding. On appeal, Johnson challenges the district court's failure to award him a reduction for minor role status under U.S.S.G. § 3B1.2(b).

A defendant may, as part of a valid plea agreement, waive

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

his statutory right to appeal his sentence. United States v. Melancon, 972 F.2d 566, 568 (5th Cir. 1992). To be valid, the waiver must be informed and voluntary. Id. at 567-68. A defendant's waiver of the right to appeal his sentence requires the special attention of the district court. United States v. Baty, 980 F.2d 977, 979 (5th Cir. 1992), cert. denied, 113 S.Ct. 2457 (1993). The district court should insure that the defendant fully understands his right to appeal and the consequences of waiving that right. Id.

As shown by the colloquy between Johnson and the district court during the arraignment proceeding, Johnson knowingly and voluntarily waived his right to appeal his sentence unless the court departed upwardly in assessing sentence. The district court asked Johnson about the provision in the plea agreement waiving the right of appeal of the sentence, and Johnson assured the court that he agreed to the waiver despite no guarantees regarding the sentence he would receive.

Because the district court did not depart upwardly in imposing Johnson's sentence, the record indicates that Johnson knowingly and voluntarily waived his right to appeal any sentencing issues, and the district court determined that Johnson understood that he was waiving such right. See Melancon, 972 F.2d at 568.

The appeal is DISMISSED. 5th Cir. R. 42.2.