

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-8816  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAMES EARL EVANS,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. W-93-CV-278 (W-91-CR-164-1)

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(September 22, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Appellant James Earl Evans entered into a plea agreement which provided that he "agrees not to contest his sentence or the manner in which it was determined in any post-conviction proceeding, including, but not limited to, a proceeding under 28 U.S.C. § 2255." The district court denied appellant's post-conviction proceeding on the basis of such agreement.

In United States v. Wilkes, 20 F.3d 651 (5th Cir. 1994), this Court recently considered whether § 2255 relief may be waived in a plea agreement. The Court stated that it saw "no

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

principled means of distinguishing such a waiver from the waiver of a right to appeal," and concluded that as a general matter, "an informed and voluntary waiver of post-conviction relief is effective to bar such relief." Id. at 653. The waiver contained in Evans' plea agreement is identical to language of the waiver in Wilkes' plea agreement. See id. at 652.

Nonetheless, Evans complains of the knowing and voluntary aspects of the proceeding below. Specifically, he complains that because the plea agreement did not specifically state that he agreed to plead guilty to a violation of 18 U.S.C. § 2, aiding and abetting, that the plea was not knowingly or voluntarily made.

Appellant completely ignores the language in the plea agreement prior to the listing of the Title 21 charges. The agreement expressly states that appellant agreed to plead guilty "to Counts One and Four of the Indictment on file against him . . . ." The indictment on file against appellant explicitly charges him with aiding and abetting. Therefore, the plea agreement adequately incorporates the charges named in the indictment.

Moreover, the charges were clarified by the district court's admonishments to appellant at his arraignment. In open court, appellant stated that he had received the indictment, had read it, or had it read to him, and had discussed the charges in it with his attorney. Count one of that indictment specifically charges a violation of 18 U.S.C. § 2, aiding and abetting. Appellant expressly stated that he understood what he was charged with and had no question of the court regarding the charges. The

court then summarized the charges, including the aiding and abetting charge. When asking for appellant's plea, the court again mentioned the charge of aiding and abetting.

Further, at appellant's arraignment, the Government explained the terms of the plea agreement, stating that he "expressly agrees to . . . waive any post-conviction remedies of the sentence that's imposed by this Court." Appellant confirmed that was the plea agreement as he understood it and that he approved of it. Because the record reflects that Evans' waiver of post-conviction relief was informed and voluntary, he is bound by the waiver contained in the informed and voluntary plea agreement. Accordingly, the district court correctly denied relief.\*\*

AFFIRMED.

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\*\*Because of our disposition, we need not reach appellant's claim of ineffective assistance of counsel based upon an alleged deficiency in counsel's advice to appellant to answer all questions truthfully during his interview with the probation officer. We note, nonetheless, that the claim is frivolous. There was no deficiency in so advising appellant. Additionally, such advice is obviously strategic in the hopes of obtaining a reduction for acceptance of responsibility.