

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-60607
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 30, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DAMIEN S. PINCKNEY,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 1:18-CR-60-1

Before DENNIS, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM:*

Damien S. Pinckney appeals the 120-month sentence imposed following his guilty plea conviction for being a felon in possession of a firearm; he raises arguments related to the district court's calculation of his advisory guidelines range. The Government has moved to dismiss the appeal or, in the alternative, for summary affirmance, based on the waiver in Pinckney's plea agreement of his right to appeal his conviction and sentence "or the manner in which that

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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sentence was imposed . . . on any ground whatsoever” except for ineffective assistance of counsel. Pinckney’s opening brief did not address the appeal waiver and he has not responded to the Government’s motion.

We review de novo whether an appeal waiver bars an appeal. *United States v. Jacobs*, 635 F.3d 778, 780-81 (5th Cir. 2011). The record reflects that Pinckney’s appeal waiver was knowing and voluntary. *See United States v. McKinney*, 406 F.3d 744, 746 (5th Cir. 2005). On appeal, Pinckney challenges the district court’s calculation of his guidelines range. The language of the waiver clearly applies to this argument, as Pinckney waived “the right to appeal the . . . sentence imposed in this case, or the manner in which that sentence was imposed . . . on any ground whatsoever.” *See Jacobs*, 635 F.3d at 781.

Accordingly, the Government’s motion to dismiss the appeal is GRANTED, and its alternative motion for summary affirmance is DENIED. Counsel for Pinckney 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 222, 223-24 (5th Cir. 1999).

APPEAL DISMISSED.