United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
October 29, 2026
Thomas B. Plunkett, III
Clerk

No. 25-60017

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

RASHON JERMAINE HARRIS,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 2:24-CR-14-1

ON REMAND FROM
THE SUPREME COURT OF THE UNITED STATES

Before SMITH, HIGGINSON, and WILSON, *Circuit Judges*.

STEPHEN A. HIGGINSON, *Circuit Judge*:

Rashon Harris pled guilty under 21 U.S.C. § 841(a) and (b)(1)(C) to possession of methamphetamine with intent to distribute. He received a sentence of 240 months of imprisonment. Harris appealed the district court's application of sentencing enhancements under U.S.S.G. §§ 3C1.2, 2D1.1(b)(1), and 2D1.1(b)(5). The government argued that the appeal should be dismissed because, as part of his guilty plea, Harris waived his right to

appeal. We agreed and dismissed the appeal. *United States v. Harris*, No. 25-60017, 2025 WL 3725066 (5th Cir. Dec. 24, 2025), *cert. granted, judgment vacated*, 146 S. Ct. 2787 (2026).

The Supreme Court then decided *Hunter v. United States*, 608 U.S. 713 (2026). *Hunter* held that "an agreement not to appeal a sentence is unenforceable when it would result in a miscarriage of justice—meaning, when it would leave in place the kind of egregious error that would bring the judicial system into disrepute." *Id.* at 717.

After *Hunter*, the Supreme Court granted Harris's petition for a writ of certiorari, vacated our judgment, and remanded. *See Harris v. United States*, 146 S. Ct. 2787 (2026).

On remand, we do not find a miscarriage of justice in Harris's case that permits him to pursue an appeal despite his appeal waiver. We therefore enforce Harris's appeal waiver against him and DISMISS this case.

I.

In *Hunter*, the Supreme Court explained that its "miscarriage of justice" standard "sets a high bar: The waiver may be set aside only if the sentence is marred by the kind of egregious error that would bring the judicial system into disrepute." *Hunter*, 608 U.S. at 727. Such an error must also be "obvious" and "not one a judge could reasonably make." *Id.* "And it must be of the type that would undermine public confidence in the judiciary." *Id.*

Though the Court did not exhaustively define a "miscarriage of justice," it offered three illustrations: "a sentence exceeding what the relevant statute allows[,]" "a sentence that is infected with a blatant constitutional error," and a sentence "imposed without 'some minimum of civilized procedure[.]'" *Id.* at 728 (quoting *United States v. Adkins*, 743 F.3d 176, 192–93 (7th Cir. 2014)). The Court also noted that "standard-fare errors

in misapplying sentencing law," such as errors in the "calculation of a Sentencing Guidelines" range, do not qualify. *Id.* at 727.

II.

Harris presents two arguments for why the Court should not enforce his appeal waiver. We address each in turn.

A.

First, Harris contends that his plea agreement was not knowing and voluntary because he pled guilty on the same day as his initial appearance. We assess whether the waiver "was knowing and voluntary," and then consider whether the waiver "applies to the circumstances at hand, based on the plain language of the agreement." *United States v. Higgins*, 739 F.3d 733, 736 (5th Cir. 2014). A waiver is knowing and voluntary if the defendant knew "that he had a right to appeal his sentence, that he was giving up that right, and the consequences of giving it up." *Id.*

The record shows that Harris knowingly and voluntarily waived his right to appeal. He signed a plea agreement with a clear, unambiguous waiver of the right to appeal his conviction and sentence on any ground whatsoever, with the exception of ineffective assistance of counsel claims. At rearraignment, Harris confirmed that he had read and discussed the plea agreement with his counsel and understood the terms. After the Government summarized the appeal waiver provision, Harris stated that he understood and agreed to the appeal waiver. These "solemn declarations in open court carry a strong presumption of verity." *United States v. McKnight*, 570 F.3d 641, 649 (5th Cir. 2009) (quoting *United States v. Lampazianie*, 251 F.3d 519, 524 (5th Cir. 2001)).

Harris contends that his appeal waiver was unknowing because he pled guilty on the same day he initially appeared on the charge and "it is difficult to conceive how someone could knowingly make a life altering decision in that short period of time." But Harris was first indicted in October 2023 on the charge to which he pled guilty, as well as an additional charge, under a different case number. The prosecution dismissed this indictment and later, with Harris's consent, charged him with a single count, one of the two counts from the original indictment. Harris ultimately pled guilty in April 2024, the same day as his initial appearance on this re-filed charge. That timing, in context, does not raise concerns that his appeal waiver was not knowing or voluntary.

B.

Second, Harris contends that the district court's reliance on U.S.S.G. § 3C1.2 represents a miscarriage of justice. Section 3C1.2 applies "[i]f the defendant recklessly created a substantial risk of death or serious bodily injury to another person in the course of fleeing from a law enforcement officer[.]" U.S.S.G. § 3C1.2.

At sentencing, the government and Harris presented testimony regarding his flight. An officer from the Mississippi Bureau of Narcotics testified that Harris, in his vehicle, "fled backwards in reverse, and flipped around[.]" He testified that Harris "drove through multiple different yards" but then admitted on cross-examination that he had no evidence to dispute that Harris only drove across one property owned by Harris's mother. Another government witness similarly stated on cross-examination that he had no evidence that the property on which Harris fled was occupied or owned by different individuals. Harris testified that he fled by driving across his mother's property, through "residential yards," without people in the vicinity. The district court applied the two-point enhancement under U.S.S.G. § 3C1.2, finding that Harris's flight recklessly created a substantial

risk that people could be killed or substantially injured. Ultimately, the district court sentenced Harris to 240 months of imprisonment.

Harris argues that the district court's application of the enhancement was a miscarriage of justice because no person was actually endangered when he drove approximately thirty yards across a vacant property. He cites *United States v. Ibarra*, in which this Court vacated a sentence resting on clearly erroneous factual findings. No. 24-20071, 2024 WL 5118485, at *2 (5th Cir. Dec. 16, 2024) (per curiam). In *Ibarra*, we held that the district court committed plain error when it justified a smaller downward variance than the defendant requested through reference to factual findings—that the defendant manufactured a controlled substance and destroyed the lives of unnamed victims—which were unsupported by the record. *Id.*

Harris's argument is unavailing for two reasons. First, as a matter of law, "we have not limited the application of the [§ 3C1.2] enhancement to situations resulting in actual harm or manifesting extremely dangerous conduct by a defendant." *United States v. Humbles*, 149 F.4th 572, 584 (5th Cir. 2025) (quoting *United States v. Jimenez*, 323 F.3d 320, 323 (5th Cir. 2003)). The imposition of an enhancement under Section 3C1.2 "simply requires that the defendant be aware that his conduct creates a risk of such a nature and degree that to disregard that risk grossly deviates from the standard of care a reasonable person would exercise under similar circumstances." *Jimenez*, 323 F.3d at 324 (citing U.S.S.G. § 2A1.3, cmt. 1). Application of the enhancement to Harris was not a miscarriage of justice simply because others were unharmed by his flight.

Second, in contrast to *Ibarra*, the district court had a factual basis for its finding that the enhancement applied: a hearing in which two law enforcement officers and Harris himself testified regarding the nature of Harris's flight.

All three witnesses agreed that Harris drove across a residential yard

or yards rather than roads intended for vehicles. One stated that Harris drove in reverse for some period. Harris's nephew, a juvenile, had recently walked in the area and deposited a package in Harris's car. Whether the property was entirely owned by Harris's mother or occupied at the time of Harris's flight is not dispositive. Harris has not cited any authority that would make the district court's finding, on this record, a miscarriage of justice.[1]

Even if the district court erred in applying the section 3C1.2 enhancement, that error would not constitute "the kind of egregious error that would bring the judicial system into disrepute." *Hunter*, 608 U.S. at 717. That error would not result in a sentence in excess of the statutory maximum, constitute a blatant constitutional error, or lead to the conclusion that his sentence was "imposed without some minimum of civilized procedure[.]" *Id.* at 728. Rather, that would be a "standard-fare error[] in misapplying sentencing law [that] cannot cancel an appeal waiver." *Id.* at 727.

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[1] The district court made broad statements regarding arrestees fleeing officers, asserting that "[t]he law says they should stop, they don't, they keep driving fast through neighborhoods or down the highway, and then someone ends up—and even sometimes the person that's fleeing ends up getting killed or seriously injured. So it's—whoever was in that area would have been in danger from a fleeing person. So the court finds that the objection to the two-point enhancement for creating a substantial risk of death is overruled." Defense counsel objected to the application of the § 3C1.2 enhancement at sentencing, arguing that it does not apply to every defendant fleeing law enforcement and instead requires that "the defendant recklessly created a substantial risk of death or serious bodily injury to another person in the course of fleeing from a law enforcement officer[.]" U.S.S.G. § 3C1.2. That is a correct statement of the law. "[M]ere flight—even if it results in armed pursuit—does not justify the enhancement[.]" *United States v. Gould*, 529 F.3d 274, 277 (5th Cir. 2008) (citing *United States v. Reyes-Oseguera*, 106 F.3d 1481 (9th Cir. 1997)); *cf. Jimenez*, 323 F.3d at 323–24 (collecting cases imposing an enhancement under § 3C1.2). Though the district court's factual findings as to Harris's flight were thin, it was not a miscarriage of justice for the district court to apply the enhancement here, particularly when the testimony and facts showed that Harris fled by driving through a yard or yards on which at least one pedestrian (his nephew) had recently walked.

IV.

"Sentencing is a complex affair . . . [in which] it is unfortunate but inevitable that mistakes will occur. Such standard-fare errors in misapplying sentencing law cannot cancel an appeal waiver." *Hunter*, 608 U.S. at 727. Given the Supreme Court's statement that typical sentencing errors are not a miscarriage of justice, we enforce Harris's appeal waiver and DISMISS the appeal.