

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

January 13, 2022

Lyle W. Cayce
Clerk

No. 21-60403
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

CORTEZ KYLES,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:18-CR-230-3

Before DAVIS, JONES, and ELROD, *Circuit Judges.*

PER CURIAM:*

Cortez Kyles appeals the 171-month sentence and restitution order imposed following his guilty plea conviction for Hobbs Act robbery and using a firearm during and in relation to the robbery. He argues that the district court erred when it enhanced his sentence on the basis that a financial

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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institution was involved, denied him a reduction in his sentence for acceptance of responsibility, and imposed an unreasonable sentence at the top of the guidelines range. Kyles further contends that the restitution order for the victim's injuries was excessive and that the district court did not make the requisite finding that his conduct was the proximate cause of her injuries.

The Government moves to dismiss the appeal or, alternatively, for summary affirmance based on the appellate waiver in Kyles's written plea agreement. Kyles's argument that the appeal waiver does not bar his appeal because his sentence is contrary to the provisions of his plea agreement and because the district court made no finding that he was the proximate cause of the victim's injuries is belied by the record.

Because Kyles has not challenged the waiver's validity and because it applies to Kyles's sentencing challenge, *see United States v. Bond*, 414 F.3d 542, 544 (5th Cir. 2005), the Government's motion to dismiss the appeal is GRANTED. Its alternative motion for summary affirmance is DENIED.

APPEAL DISMISSED.