

No. 24-5231

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Dec 18, 2024

KELLY L. STEPHENS, Clerk

UNITED STATES OF AMERICA.

Plaintiff-Appellee,

V.

RANDALL T. DENNIS.

Defendant-Appellant.

ORDER

Before: DAVIS, MATHIS, and BLOOMEKATZ, Circuit Judges.

Randall T. Dennis, a former correctional officer, appeals his judgment of conviction following his guilty plea to violating an inmate's civil rights. The government moves to dismiss Dennis's appeal based on the appeal waiver contained in his plea agreement. Dennis opposes the government's motion.

Dennis waived indictment by a grand jury and pleaded guilty to an information charging that, while acting under color of law as a correctional officer at the Eastern Kentucky Correctional Complex, he deprived an inmate of the right to be free from cruel and unusual punishment by assaulting the inmate and failing to intervene to protect the inmate from being assaulted by other officers, in violation of 18 U.S.C. § 242. Dennis's plea agreement included a provision in which he "waive[d] the right to appeal the guilty plea, conviction, and sentence."

At sentencing, the district court calculated a guidelines range of 78 to 97 months of imprisonment based on a total offense level of 28 and a criminal history category of I. Varying downward from that range in light of Dennis’s family situation, the district court sentenced Dennis to 60 months of imprisonment followed by two years of supervised release.

Dennis appealed. The government moves to dismiss Dennis's appeal based on the appeal waiver contained in his plea agreement.

“It is axiomatic that as part of a valid plea agreement, criminal defendants may waive many of their most fundamental legal rights, including their right to appeal.” *United States v. Milliron*, 984 F.3d 1188, 1192 (6th Cir. 2021) (cleaned up). “[A]n appeal waiver is enforceable if the defendant’s waiver of his appellate rights was knowing and voluntary.” *United States v. Toth*, 668 F.3d 374, 378 (6th Cir. 2012). We review de novo Dennis’s waiver of his appellate rights. *See United States v. Detloff*, 794 F.3d 588, 592 (6th Cir. 2015).

In response to the government’s motion to dismiss, Dennis argues that his plea agreement lacks consideration and is therefore unenforceable. “Plea agreements are contractual in nature, so we use traditional contract law principles in interpreting and enforcing them.” *United States v. Harris*, 473 F.3d 222, 225 (6th Cir. 2006). “Indeed, because plea agreements are governed by general principles of contract law, the law does not permit a criminal defendant to bargain away his constitutional rights without receiving in return the benefit of his bargain.” *United States v. Hunter*, 316 F. App’x 470, 472 (6th Cir. 2009) (per curiam) (cleaned up).

Dennis’s plea agreement stated: “In exchange for the benefits of this agreement, the Defendant waives the right to appeal the guilty plea, conviction, and sentence.” Dennis contends that he received nothing in return for his appeal waiver. But the government agreed to recommend a two-level reduction for acceptance of responsibility under USSG § 3E1.1(a) and to make a motion at sentencing for an additional one-level reduction under USSG § 3E1.1(b). We have recognized that such an agreement by the government provides consideration for a plea agreement. *See United States v. Schuhe*, 688 F. App’x 337, 339 (6th Cir. 2017) (per curiam); *Hunter*, 316 F. App’x at 472-73; *United States v. Wesley*, 13 F. App’x 257, 260 (6th Cir. 2001) (per curiam). The government also agreed to recommend Dennis’s release as long as he did not violate his release conditions. Furthermore, if Dennis had not waived indictment and pleaded guilty, he could have been charged with additional offenses related to his admission in his plea agreement that he falsified a report and lied to investigators about the assault—charges that were filed against an officer involved in the assault and subsequent coverup who did not plead guilty. *See United States*

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v. Nantell, No. 0:23-cr-12 (E.D. Ky.). Dennis's plea agreement was supported by sufficient consideration.

According to Dennis, ineffective assistance of counsel rendered his plea agreement and appeal waiver unknowing and involuntary. But as Dennis acknowledges, we "typically will not review a claim of ineffective assistance on direct appeal except in rare cases where the error is apparent from the existing record." *United States v. Lopez-Medina*, 461 F.3d 724, 737 (6th Cir. 2006). Dennis contends that the record shows that his attorney failed to communicate with him and failed to provide adequate advice, citing his post-judgment letter to the district court and motion for leave to proceed in forma pauperis on appeal. Dennis, however, stated under oath at the plea hearing that he was satisfied with his attorney's advice and representation and that his attorney reviewed the plea agreement with him and answered his questions. The existing record does not support Dennis's claims of ineffective assistance of counsel.

In his plea agreement, Dennis retained the right to bring a collateral attack raising ineffective-assistance claims. Dennis's ineffective-assistance claims are more appropriately raised in a motion under 28 U.S.C. § 2255, "where the record regarding counsel's performance can be developed in more detail." *Id.*

Dennis also argues that enforcing the appeal waiver would result in a miscarriage of justice. "Although we have never expressly recognized the miscarriage-of-justice exception to the enforcement of appellate waivers in a published decision, we have implicitly recognized it in several unpublished decisions." *United States v. Mathews*, 534 F. App'x 418, 425 (6th Cir. 2013) (per curiam). To the extent that Dennis contends that ineffective assistance of counsel supports application of the miscarriage-of-justice exception, his ineffective-assistance claims are premature and should instead be raised in a § 2255 motion, as discussed above. Dennis further asserts that enforcing the appeal waiver would constitute a miscarriage of justice in light of the disparity between his sentence and the other officers' sentences. Although Dennis's sentence was higher than most of the other sentences, he was involved in the inmate's assault—not just the subsequent coverup, as was the case with several of the other officers—and was its "initiator." He was also a

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member of the correctional facility's internal affairs unit, tasked with investigating misconduct by facility employees. Given these differences between Dennis's case and the related cases, the sentencing disparity does not amount to an "extraordinary miscarriage of justice." *Id.* at 426.

Finally, Dennis argues that the district court nullified his appeal waiver by advising him at sentencing that he could appeal. At the conclusion of the sentencing hearing, the district court stated: "You have waived your right to take an appeal in paragraph 7 of the plea agreement. While you waived your right, despite the fact that there's a downward variance from the guideline range, I'm going to have the clerk notify you of your right to appeal." The clerk then read the form entitled "Court's Advice of Right to Appeal," which Dennis signed. That form stated: "You are now notified by this court that you have a right to appeal your case to the Sixth Circuit Court of Appeals (unless you have validly waived that right)" The district court merely provided the standard advice about appeal rights required by Rule 32 while correctly noting that Dennis had waived those rights. Fed. R. Crim. P. 32(j)(1)(B). Even if the district court's advice had not been consistent with the plea agreement, "any pronouncement from the bench that seeks unilaterally to amend a plea agreement exceeds the court's authority under the Criminal Rules and is without effect." *United States v. Fleming*, 239 F.3d 761, 765 (6th Cir. 2001) (holding that the district court's advice of appeal rights did not modify the defendant's appeal waiver).

For these reasons, we **GRANT** the government's motion and **DISMISS** Dennis's appeal.

ENTERED BY ORDER OF THE COURT


Kelly L. Stephens, Clerk