

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 13-4460

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ANTHONY MCINTOSH,

Defendant-Appellant

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

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UNITED STATES' MOTION TO DISMISS

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The United States, by and through its undersigned counsel, hereby moves pursuant to Federal Rule of Appellate Procedure 27 and Local Rule 27(f) to dismiss defendant Anthony McIntosh's appeal based on his plea agreement with the government.<sup>1</sup>

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<sup>1</sup> The United States has contacted defendant's attorney by email and voicemail, but has not yet learned whether defendant opposes this motion or will file a response.

## ARGUMENT

McIntosh waived his right to appeal his conviction and sentence pursuant to a plea agreement.<sup>2</sup> With narrow exceptions not relevant here, a defendant's waiver of his right to appeal a conviction or sentence is valid and enforceable if it was knowingly and intelligently made. See *United States v. Blick*, 408 F.3d 162, 168-171 (4th Cir. 2005).

In this case, the record shows that the defendant entered into a plea agreement which contained a valid waiver of appeal, that he did so knowingly and intelligently, and that his sentence falls within the scope of the appeal waiver. McIntosh pled guilty to obstruction of justice, in violation of 18 U.S.C. 1519, on January 4, 2013. Plea Tr. 4.<sup>3</sup> The agreement explained that in exchange for concessions by the United States, McIntosh waived constitutional rights including a right to trial. R. 90 at 2. He waived "all right" to "appeal the \* \* \* conviction." R. 90 at 2-4.

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<sup>2</sup> McIntosh's counsel has filed a brief under *Anders v. California*, 386 U.S. 738 (1967). Because the United States agrees with appellant's counsel that there are no potentially meritorious issues, the United States has filed a notice stating that it does not intend to file a response brief.

<sup>3</sup> R. \_" refers to documents filed in the district court by docket number. "Sentencing Tr. \_" refers to the transcript of defendant's June 3, 2013 sentencing hearing. "Plea Tr. \_" refers to the transcript of defendant's January 4, 2013 arraignment and plea hearing.

McIntosh also gave up his right to appeal his sentence. R. 90 at 4-5. His plea agreement stated that McIntosh might receive up to 20 years in prison. R. 90 at 1. It explained he could not appeal “any issues that relate to the establishment of the advisory guidelines range, the determination of the defendant’s criminal history, the weighing of the sentencing factors, and the decision whether to impose and the calculation of any term of imprisonment.” R. 90 at 4. The only right McIntosh retained was the right to appeal a sentence that “exceeds the guidelines range for a sentence based upon an offense level of 17” and a sentence based on “arithmetical, technical, or other clear error.” R. 90 at 4-5.

At his re-arraignment and plea hearing, the court explained to McIntosh the possible penalties he faced: up to 20 years in prison. Plea Tr. 7-8. The court also explained that his federal sentencing guidelines range was 24 to 30 months. Plea Tr. 9. The court told McIntosh that, under the terms of his plea agreement, he would waive his right to appeal. Plea Tr. 11. When asked if he understood, McIntosh agreed. Plea Tr. 11. McIntosh was represented by counsel and when asked if he was “satisfied with the services of [his] attorneys,” he agreed. Plea Tr. 13. He acknowledged that they had “gone over the elements of the offense with [him],” “discussed and shared \* \* \* their findings as to the strength or weaknesses of the government’s case,” and “done everything [he had] asked them to do.” Plea Tr. 13-14.

McIntosh's appeal in this case does not fall within any recognized exceptions to his waiver. He was sentenced to 24 months in prison, the lowest within-guidelines sentence for his offense level of 17. R. 102; Sentencing Tr. 3, 45. Thus he was not sentenced to a term of imprisonment that exceeds the maximum penalty provided by statute, nor does McIntosh appear to contend that his sentence was based on any arithmetical error or impermissible factor, such as race or denial of counsel. See *United States v. Attar*, 38 F.3d 727, 732 (4th Cir. 1994), cert. denied, 514 U.S. 1107 (1995). Thus, his sentence is within the scope of his appeal waiver. In seeking this Court's review, McIntosh simply chooses to ignore a provision of the plea agreement that he has deemed to be disadvantageous to him.

For these reasons, the United States respectfully requests that this Court dismiss this appeal in part to the extent McIntosh raises any challenge to his conviction or sentence other than the voluntariness of his guilty plea. To allow the defendant to pursue review would contravene the very purpose of the inclusion of such provisions in plea agreements and would "eliminate the chief virtues of the plea system – speed, economy and finality." *United States v. Wiggins*, 905 F.2d 51, 54 (4th Cir. 1990) (quoting *Blackledge v. Allison*, 431 U.S. 63, 71 (1977)).

**CONCLUSION**

For the foregoing reasons, the United States of America respectfully requests that this Court dismiss the appeal.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I certify that on November 18, 2013, I electronically filed the foregoing UNITED STATES' MOTION TO DISMISS with the Clerk of the Court using the appellate CM/ECF system.

I further certify that the following counsel of record is a registered CM/ECF participant and will be served electronically:

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