

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 24-5231

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

RANDALL T. DENNIS,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY

MOTION OF THE UNITED STATES TO DISMISS APPEAL
BASED ON APPEAL WAIVER

INTRODUCTION

When defendant Randall Dennis worked as a correctional officer, he and his colleagues attacked a submissive and restrained inmate. Dennis pleaded guilty to violating the inmate’s civil rights, and he received a below-Guidelines sentence. His plea agreement waived the right to appeal the guilty plea, conviction, and sentence. Because Dennis knowingly and voluntarily agreed to this waiver, this Court should dismiss his appeal without awaiting formal briefing. *See United States v. McGilvery*, 403 F.3d 361, 362-363 (6th Cir. 2005) (“[W]e strongly

encourage the government to promptly file a motion to dismiss the defendant's appeal where the defendant waived his appellate rights as part of a plea agreement."").

BACKGROUND

In 2018, when Randall Dennis worked as a correctional officer, he kicked and punched an inmate's head and stepped on the inmate's back—all while the inmate was handcuffed, shackled, and compliant. Plea Agreement, R. 10, Page ID# 24. Dennis knew that this beating violated the inmate's constitutional rights. *Ibid.* Dennis also witnessed another officer repeatedly punch the inmate, but Dennis did not intervene despite knowing he had a legal duty to do so. *Ibid.* Finally, Dennis tried to cover up his crimes by drafting a false report and lying about the incident to investigators. *Ibid.*

The United States charged Dennis with violating 18 U.S.C. 242, Deprivation of Rights Under Color of Law. Information, R. 4, Page ID## 8-11. Dennis pleaded guilty, and his plea agreement states that he "waives the right to appeal the guilty plea, conviction, and sentence." Plea Agreement, R. 10, Page ID# 26. Dennis similarly waived the right to attack collaterally the guilty plea, conviction, and sentence, though that waiver includes an exception for claims of ineffective assistance of counsel. *Ibid.* Finally, Dennis acknowledged in the agreement that

he understood it, that his attorney fully explained it to him, and that his acceptance was voluntary. *Id.* at Page ID# 28.

The district court held a hearing on the plea agreement, first asking Dennis whether he was “fully satisfied with the advice and representation” of his attorney. Plea Transcript (Tr.), R. 31, Page ID# 143. Dennis responded, “Yes, sir.” *Ibid.* Next, the court explained to Dennis that he would not be allowed to change his plea if the sentence was more severe than expected, and Dennis acknowledged that he understood this. *Id.* at Page ID## 162-163. After that, the court discussed the appeal waiver and asked Dennis whether he understood that “[n]o matter what the sentence, no appeal of it.” *Id.* at Page ID## 164-165. Dennis responded, “Yes, sir.” *Ibid.* The court then ruled that the appeal waiver was knowing and voluntary and that Dennis understood its consequences. *Id.* at Page ID# 166.

At a later sentencing hearing, the district court determined that the recommended Guidelines range was 78 to 97 months’ imprisonment, consistent with the plea agreement and the uncontested presentence report. Sentencing Tr., R. 32, Page ID## 193-194. Departing downward from the Guidelines, the court sentenced Dennis to 60 months’ imprisonment, concluding that a variance was justified given Dennis’s family situation. *Id.* at Page ID# 203. The court reminded Dennis that he waived his right to appeal but still provided him with the standard form notifying defendants about the right to appeal. *Id.* at Page ID# 205. The

court entered judgment on March 12, 2024, and Dennis filed a pro se notice of appeal that same day. Judgment, R. 17, Page ID# 70; Notice of Appeal, R. 18, Page ID# 77.

ARGUMENT

This Court should dismiss this case because Dennis knowingly and voluntarily waived his right to appeal.

The plea agreement here plainly precludes a direct appeal: “Defendant waives the right to appeal the guilty plea, conviction, and sentence.” Plea Agreement, R. 10, Page ID# 26. This Court has repeatedly upheld and enforced similar plea agreements with appeal waivers. *See, e.g., United States v. Swanberg*, 370 F.3d 622, 625 (6th Cir. 2004) (“Criminal defendants may waive their right to appeal as part of a plea agreement so long as the waiver is made knowingly and voluntarily.”). The Court reviews the validity of an appeal waiver de novo. *Id.* at 626.

“The sine qua non of a valid waiver is that the defendant enter into the agreement knowingly and voluntarily.” *United States v. Fleming*, 239 F.3d 761, 764 (6th Cir. 2001). To determine whether a defendant’s acceptance was in fact knowing and voluntary, the Court looks to the written agreement and plea colloquy. *See United States v. Pitts*, 997 F.3d 688, 701 (6th Cir. 2021). Here, the written document and subsequent colloquy show that Dennis fully understood that he was waiving his right to appeal and that he did so of his own free will:

- **First**, in the plea agreement, Dennis acknowledged that he understood it, that his attorney had fully explained it to him, and that his decision to accept the agreement was voluntary (Plea Agreement, R. 10, Page ID# 28);
- **Second**, the district court thoroughly explained the terms and consequences of the agreement to Dennis, emphasizing that “[n]o matter what the sentence, no appeal of it” (Plea Tr., R. 31, Page ID## 164-165);
- **Third**, Dennis responded affirmatively (“Yes, sir”) when the court asked him whether he understood the appeal waiver and had spoken to his attorney about it (Plea Tr., R. 31, Page ID## 164-165); and
- **Fourth**, Dennis confirmed to the court that no threats or promises had been made to induce him to accept the plea agreement (Plea Tr., R. 31, Page ID# 138).

This Court routinely enforces appeal waivers in situations like this. For example, this Court found a knowing and voluntary waiver when a “defendant testified at his plea hearing that he had reviewed the plea agreement with counsel, that he understood all of the agreement’s provisions, and that his guilty plea was not coerced.” *United States v. Calderon*, 388 F.3d 197, 200 (6th Cir. 2004). Likewise, this Court dismissed an appeal when a defendant told the court that he (1) discussed the plea agreement with his lawyer, (2) understood he was waiving constitutional rights afforded to criminal defendants, and (3) wanted to plead guilty of his own free will. *See United States v. Powell*, 798 F.3d 431, 434 (6th Cir. 2015). That is precisely what happened here.

To be sure, Dennis, like many defendants who plead guilty, “may have hoped for a more lenient sentence.” *United States v. Presley*, 18 F.4th 899, 906

(6th Cir. 2021). But his “plea is not rendered involuntary merely because a prediction that a guilty plea will result in a light sentence does not come true.” *Ibid.* (citation omitted). As this Court has explained, the Court’s role is not to judge “[t]he wisdom of the bargain struck,” but “to enforce the terms of agreements freely and knowingly entered into.” *United States v. Grundy*, 844 F.3d 613, 617 (6th Cir. 2016). “Enforcing appeal waivers makes good sense as well” because the defendant gains concessions from the government, which also benefits by saving time and money on appeals. *United States v. Toth*, 668 F.3d 374, 379 (6th Cir. 2012). Thus, this Court should not disturb the parties’ agreement here, especially considering that the district court varied downward to impose a 60-month sentence, which was well below the ten-year statutory maximum and even lower than the recommended 78 to 97 months’ imprisonment that Dennis understood he faced.

CONCLUSION

This Court should dismiss the appeal.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 1225 words. This motion also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) because it was prepared in Times New Roman 14-point font using Microsoft Word for Microsoft 365.

s/ Brant S. Levine
BRANT S. LEVINE
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Date: May 30, 2024

CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2024, I electronically filed the above MOTION OF THE UNITED STATES TO DISMISS APPEAL BASED ON APPEAL WAIVER with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system. I certify that participants here who are registered CM/ECF users will receive service by the appellate CM/ECF system.

s/ Brant S. Levine
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