

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

November 12, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

IBANGA ETUK, a/k/a Mark,

Defendant - Appellant.

No. 21-5062
(D.C. No. 4:20-CR-00100-CVE-1)
(N.D. Okla.)

ORDER AND JUDGMENT*

Before **McHUGH**, **MORITZ**, and **CARSON**, Circuit Judges.

Ibanga Etuk pled guilty to bank fraud and aggravated identity theft, in violation of 18 U.S.C. §§ 1344(2) and 1028A. The district court sentenced him to 48 months' imprisonment. Although his plea agreement contained a broad waiver of his appellate rights, he filed a notice of appeal. The government has moved to enforce the appeal waiver under *United States v. Hahn*, 359 F.3d 1315 (10th Cir. 2004) (en banc) (per curiam).

Under *Hahn*, we consider “(1) whether the disputed appeal falls within the scope of the waiver of appellate rights; (2) whether the defendant knowingly and

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

voluntarily waived his appellate rights; and (3) whether enforcing the waiver would result in a miscarriage of justice.” *Id.* at 1325. The government asserts that all of the *Hahn* conditions have been satisfied: (1) Etuk’s appeal is within the scope of the appeal waiver because his sentence was within the range contemplated by the plea agreement; (2) he knowingly and voluntarily waived his appellate rights; and (3) enforcing the waiver would not result in a miscarriage of justice. In response, Etuk, through counsel, states he “do[es] not contest the government’s motion.” Resp. at 2.

Based on this concession and our independent review of the record, we grant the government’s motion and dismiss the appeal. We do so, however, without prejudice to Etuk’s right to pursue post-conviction relief on the grounds permitted in his plea agreement.

Entered for the Court
Per Curiam

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
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Christopher M. Wolpert
Clerk of Court

Jane K. Castro
Chief Deputy Clerk

November 12, 2021

Mr. Ty Gee
Haddon, Morgan, and Foreman
150 East 10th Avenue
Denver, CO 80203

RE: 21-5062, United States v. Etuk
Dist/Ag docket: 4:20-CR-00100-CVE-1

Dear Counsel:

Enclosed is a copy of the order and judgment issued today in this matter. The court has entered judgment on the docket pursuant to Fed. R. App. P. Rule 36.

Pursuant to Fed. R. App. P. Rule 40(a)(1), any petition for rehearing must be filed within 14 days after entry of judgment. Please note, however, that if the appeal is a civil case in which the United States or its officer or agency is a party, any petition for rehearing must be filed within 45 days after entry of judgment. Parties should consult both the Federal Rules and local rules of this court with regard to applicable standards and requirements. In particular, petitions for rehearing may not exceed 3900 words or 15 pages in length, and no answer is permitted unless the court enters an order requiring a response. *See* Fed. R. App. P. Rules 35 and 40, and 10th Cir. R.35 and 40 for further information governing petitions for rehearing.

Please contact this office if you have questions.

Sincerely,



Christopher M. Wolpert
Clerk of Court

cc: Leena Alam
Kristin Fulton Harrington

CMW/sls

Lynn Tiefenthaler

From: ca10_cmecf_notify@ca10.uscourts.gov
Sent: Friday, November 12, 2021 9:20 AM
To: CM-ECF Intake OKND
Subject: 21-5062 United States v. Etuk "Case termination for order and judgment" (4:20-CR-00100-CVE-1)

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Tenth Circuit Court of Appeals

Notice of Docket Activity

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Case Name: United States v. Etuk
Case Number: [21-5062](#)
Document(s): [Document\(s\)](#)

Docket Text:

[10871699] Dismissed. Terminated after submissions without oral hearing. Written, unsigned, unpublished. Judges McHugh, Moritz and Carson. Mandate to issue. [21-5062]

Notice will be electronically mailed to:

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The following document(s) are associated with this transaction:

Document Description: Order and Judgment

Original Filename: 21-5062.pdf

Electronic Document Stamp:

[STAMP acecfStamp_ID=1104938855 [Date=11/12/2021] [FileNumber=10871699-0]
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9c3bd0e45199dea80241b34bc09]]

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53a0f8608ce9243798f6cb16b3eb1]]

Recipients:

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