

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

December 11, 2007

No. 07-10298
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

TONY LEE JOHNSON

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:06-CR-79-ALL

Before REAVLEY, BARKSDALE, and GARZA, Circuit Judges.

PER CURIAM:*

Tony Lee Johnson appeals the 235-month sentence imposed following his guilty-plea conviction for possession with intent to distribute cocaine base. He argues that the district court plainly erred by ordering that his sentence be served consecutively to state court sentences that had not yet been imposed, but he concedes that the issue is foreclosed by *United States v. Brown*, 920 F.2d 1212, 1216-17 (5th Cir. 1991), abrogated on other grounds, *United States v. Candia*, 454 F.3d 468, 472-73 (5th Cir. 2006). The Government seeks to enforce

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

the appeal waiver provision in Johnson's plea agreement and moves for summary affirmance.

Johnson's appeal waiver was knowing and voluntary, and therefore, the waiver is enforced. See *United States v. Melancon*, 972 F.2d 566, 567-68 (5th Cir. 1992). Moreover, contrary to Johnson's argument, he is not entitled to appeal based on the exception to the waiver for appeals of sentences exceeding the statutory maximum punishment because his sentence did not exceed the statutory maximum term of life imprisonment. See 21 U.S.C. § 841(b)(1)(A)(iii). Thus, we do not address the merits of Johnson's challenge to his sentence.

The judgment of the district court is **AFFIRMED**. The Government's motion for summary affirmance is **GRANTED**. The Government's alternative motion for an extension of time is **DENIED**.