

April 11, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-20257  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GANIYU ATANDA OSHO,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:03-CR-127-1  
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Before JONES, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:\*

Ganiyu Atanda Osho appeals the 57-month sentence imposed following his guilty-plea conviction for aiding and abetting and possession of stolen mail. As part of his plea agreement, Osho agreed to waive the right to appeal the sentence imposed and the manner in which it was determined, except for a sentence above the statutory maximum or an upward departure from the Sentencing Guidelines. The Government seeks to enforce the waiver. Osho argues that this waiver does not bar his appeal because his

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

sentence exceeds the statutory maximum under United States v. Booker, 543 U.S. 220 (2005), since his sentence was enhanced based on facts to which he did not admit. He also contends that he could not have waived his rights under a decision that had not been issued at the time he pleaded guilty.

Osho's appeal waiver is enforceable and bars his right to challenge his sentence on the grounds asserted. See United States v. Burns, 433 F.3d 442, 450-51 (5th Cir. 2005); United States v. Bond, 414 F.3d 542, 545 (5th Cir. 2005); United States v. Baymon, 312 F.3d 725, 727 (5th Cir. 2002).

AFFIRMED.