

June 8, 2007

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 06-40745  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ARNELL SHELTON,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Texas  
(1:05-CR-135-2)  
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Before SMITH, WIENER, and OWEN, Circuit Judges.

PER CURIAM:\*

Defendant-Appellant Arnell Shelton appeals the 36-month sentence that was imposed on him following his guilty plea conviction for assaulting a federal corrections officer. Shelton contends that the waiver of appeal contained in his plea agreement does not bar the instant appeal, because the government breached the agreement by advocating an upward departure. Shelton also contends that the district court erred by failing to give notice of its intent to depart upwardly, as required by FED. R. CRIM. P. 32(h). The government seeks to enforce the appeal waiver.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

As the government's conduct was consistent with the parties' reasonable understanding of the plea agreement, the agreement was not breached. See United States v. Munoz, 408 F.3d 222, 226 (5th Cir. 2005). As Shelton's appeal waiver was knowing and voluntary, the waiver is enforced. See United States v. Melancon, 972 F.2d 566, 567-68 (5th Cir. 1992). We do not, therefore, address the merits of Shelton's argument regarding the district court's failure to provide notice of its intent to depart upwardly from the Sentencing Guidelines. The judgment of the district court is, in all respects,  
AFFIRMED.