

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

April 15, 2013

Lyle W. Cayce
Clerk

No. 12-40956
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

PHILLIP A. LOWE,

Defendant-Appellant

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:11-CR-133-1

Before BENAVIDES, HAYNES, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Phillip A. Lowe appeals the sentence imposed following his guilty plea to one count of wire fraud. He was sentenced to 70 months of imprisonment and three years of supervised release. He contends that the district court erred by denying him a reduction for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1. The Government responds that Lowe's claim of error is barred by his appeal waiver.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 12-40956

While recognizing the existence of the appeal waiver and certifying that the Government intends to enforce the waiver, *see United States v. Acquaye*, 452 F.3d 380, 382 (5th Cir. 2006), Lowe has not challenged its validity on appeal, and he has not asserted that he is appealing based on the exceptions to the appeal waiver. A review of the record indicates that Lowe knowingly and voluntarily waived his right to appeal his sentence, *see United States v. Portillo*, 18 F.3d 290, 292 (5th Cir. 1994), and that his challenge to the denial of a reduction for acceptance of responsibility does not fall within the exceptions to the waiver. Therefore, the appeal waiver bars the instant appeal.

Accordingly, the appeal is DISMISSED as frivolous. *See* 5TH CIR. R. 42.2. Counsel is WARNED that the filing of an appeal contrary to an appeal waiver is a needless waste of resources and could result in sanctions. *See United States v. Gaitan*, 171 F.3d 222, 224 (5th Cir. 1999).