

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 19th day of March, two thousand twenty.

PRESENT: REENA RAGGI,
RAYMOND J. LOHIER, JR.,
STEVEN J. MENASHI,
Circuit Judges.

UNITED STATES OF AMERICA,

Appellee,

v.

No. 17-282-cr

ALEXANDER DUARTE, AKA CABEZA,

Defendant-Appellant.

1 FOR DEFENDANT-APPELLANT:

DAVID J. WILLIAMS, Jarvis,
McArthur & Williams LLC,
Burlington, VT.

5 FOR APPELLEE:

LAURA HIGGINS, Assistant
United States Attorney
(Tiffany H. Lee, Assistant
United States Attorney, *on the
brief*), for James P. Kennedy, Jr.,
United States Attorney for the
Western District of New York,
Rochester, NY.

13 Appeal from a January 24, 2017 judgment of the United States District
14 Court for the Western District of New York (Lawrence J. Vilardo, *Judge*).

15 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED,
16 AND DECREED that this appeal is DISMISSED.

17 Alexander Duarte appeals from a judgment of conviction entered by the
18 District Court (Vilardo, L) after a plea of guilty pursuant to a plea agreement.
19 Duarte argues that his sentence is procedurally unreasonable because the District
20 Court failed to explain why it imposed a sentence that is 90 months longer than
21 the sentence Duarte's co-conspirator received for substantially similar conduct.
22 The Government responds that Duarte's sentencing challenge is barred by the
23 terms of the appeal waiver in his plea agreement and that, in any event, his
24 sentence is reasonable. We assume the parties' familiarity with the underlying

1 facts and the record of prior proceedings, to which we refer only as necessary to
2 explain our decision to dismiss this appeal in view of Duarte’s valid appeal
3 waiver.

4 “Waivers of the right to appeal a sentence are presumptively enforceable.”
5 United States v. Arevalo, 628 F.3d 93, 98 (2d Cir. 2010). They are “unenforceable
6 only in very limited situations, such as when the waiver was not made
7 knowingly, voluntarily, and competently, when the sentence was imposed based
8 on constitutionally impermissible factors, such as ethnic, racial or other
9 prohibited biases, when the government breached the plea agreement, or when
10 the sentencing court failed to enunciate any rationale for the defendant's
11 sentence.” Id. (quotation marks omitted).

12 Duarte first argues that he did not knowingly and voluntarily waive his
13 right to appeal because the District Court failed to inform him that he was giving
14 up his right under 18 U.S.C. § 3742(a)(1) to appeal a sentence “imposed in
15 violation of law.” We reject this argument. The waiver specifically references
16 § 3742 and explains that Duarte is giving up his right to appeal under that
17 statute. In addition, during Duarte’s guilty plea proceedings, the District Court
18 explained the terms of the appeal waiver, and Duarte confirmed that he

1 understood. The record thus “clearly demonstrates that the waiver was . . .
2 knowing (in the sense that the defendant fully understood the potential
3 consequences of his waiver).” United States v. Ready, 82 F.3d 551, 557 (2d Cir.
4 1996) (quotation marks omitted).

5 Duarte also argues that the appeal waiver is unenforceable because the
6 District Court failed to “state in open court the reasons for its imposition” of
7 Duarte’s sentence, as required by 18 U.S.C. § 3553(c)(1). Duarte further claims
8 that the District Court was required under 18 U.S.C. § 3553(a)(6) to address why
9 it imposed a sentence that was longer than his co-conspirator’s sentence, but that
10 it failed to do so. We disagree. As Duarte acknowledges, this is not a case in
11 which the sentencing court “failed to enunciate any rationale” for the sentence.
12 Arevalo, 628 F.3d at 98 (quotation marks omitted). To the contrary, the District
13 Court gave several reasons to justify Duarte’s sentence, including that Duarte
14 had committed “a serious drug offense” involving “a serious firearm,” in which
15 “a life was taken.” App’x 110. Allegations that the District Court failed
16 specifically to address the § 3553(a)(6) sentencing factor do not present one of the
17 “limited situations” that prompt us to ignore an appellate waiver. Arevalo, 628

1 F.3d at 98; see United States v. Buissereth, 638 F.3d 114, 117 (2d Cir. 2011).¹

2 We have considered Duarte’s remaining arguments and conclude that they
3 are without merit. For the foregoing reasons, Duarte’s appeal is hereby
4 DISMISSED.

5 FOR THE COURT:

6 Catherine O’Hagan Wolfe, Clerk of Court

1 We would also reject Duarte’s argument relating to § 3553(a)(6) on the merits. The District Court was not required to explain why it imposed a longer sentence on Duarte than the sentence his co-conspirator received. See United States v. Banks, 464 F.3d 184, 190 (2d Cir. 2006). “[S]ection 3553(a)(6) requires a district court to consider nationwide sentence disparities, but [it] does not require a district court to consider disparities between co-defendants.” United States v. Frias, 521 F.3d 229, 236 (2d Cir. 2008).