

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-4864

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FEROSE KERRY KHAN,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Leonie M. Brinkema, District Judge. (1:11-cr-00143-LMB-1)

Submitted: September 25, 2012

Decided: November 8, 2012

Before NIEMEYER, WYNN, and DIAZ, Circuit Judges.

Dismissed in part, affirmed in part by unpublished per curiam opinion.

Ferose Kerry Khan, Appellant Pro Se. Dennis Michael Fitzpatrick, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Ferose Kerry Khan appeals his conviction of conspiracy to distribute cocaine, in violation of 21 U.S.C. § 846 (2006), pursuant to a written plea agreement, and his sentence of sixty months' imprisonment. He argues that his plea was unknowing and involuntary, that the indictment was defective, that the factual basis for his plea was insufficient, that the district court erred in calculating his Guidelines range, and that counsel was ineffective for various reasons. The Government seeks enforcement of the appellate waiver in Khan's plea agreement. We dismiss in part and affirm in part.

Khan's challenge to the voluntariness of his guilty plea and his claims of ineffective assistance of counsel are not barred by the waiver provision. We therefore deny the Government's motion to dismiss in part. Upon review of the plea agreement and the transcript of the Fed. R. Crim. P. 11 hearing, however, we conclude that Khan knowingly and voluntarily entered his guilty plea. Accordingly, we affirm the conviction on this ground. With regard to Khan's ineffective assistance of counsel claims, we decline to review those claims on direct appeal because counsel's ineffectiveness does not conclusively appear from the record. See United States v. Baldovinos, 434 F.3d 233, 239 (4th Cir. 2006) (providing standard).

Turning to the validity of the appellate waiver provision, our review of the record leads us to conclude that Khan voluntarily waived his right to appeal. The conviction issues Khan raises on appeal that are unrelated to the voluntariness of his guilty plea and all of the issues he raises that challenge his sentence fall squarely within the scope of his waiver of appellate rights. We therefore grant the Government's motion to dismiss in part and dismiss this portion of the appeal.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED IN PART;
AFFIRMED IN PART