

United States Court of Appeals
For the Eighth Circuit

No. 25-3333

United States of America

Plaintiff - Appellee

v.

Antwon Tolefree

Defendant - Appellant

Appeal from United States District Court
for the Western District of Missouri - Kansas City

Submitted: September 22, 2026
Filed: October 22, 2026

Before LOKEN, ARNOLD, and ERICKSON, Circuit Judges.

ARNOLD, Circuit Judge.

Antwon Tolefree pleaded guilty to conspiring to distribute less than fifty kilograms of marijuana, *see* 21 U.S.C. §§ 841(a)(1), (b)(1)(D), and 846, money laundering, *see* 18 U.S.C. §§ 1956(a)(1)(B)(i) and 2, and being a drug user in

possession of a firearm, *see id.* §§ 922(g)(3) and 924(a)(2). The district court¹ sentenced him to five years' probation thanks in large part to the substantial assistance he provided in prosecuting others. While Tolefree was serving his sentence, the probation office accused him of violating the conditions of his probation. For example, it said Tolefree had violated the condition prohibiting him from committing additional crimes because he had sold fentanyl. After the court found that Tolefree had committed the alleged violations, it revoked his probation and sentenced him to 78 months in prison. On appeal Tolefree asserts that his sentence is substantively unreasonable.

The government moves to dismiss the appeal on the ground that Tolefree waived his challenge to the reasonableness of his sentence when he signed his plea agreement. That agreement provides that Tolefree “expressly waives his right to appeal his sentence” except in certain circumstances, including an appeal of “an illegal sentence.” The agreement specifies, though, that an illegal sentence does not include the court's “imposition of an unreasonable sentence.”

We will enforce an appeal waiver so long as the appeal falls within the scope of the waiver, the defendant agreed to the waiver knowingly and voluntarily, and application of the waiver wouldn't result in a miscarriage of justice. *See United States v. Merrival*, 182 F.4th 725, 727 (8th Cir. 2026). “The government bears the burden to prove that the plea agreement clearly and unambiguously waives a defendant's right to appeal, and we construe any ambiguities in the agreement against the government.” *United States v. Lugo-Barcenas*, 57 F.4th 633, 636 (8th Cir. 2023). We conclude that the government has carried its burden here: Tolefree's appeal waiver bars him from challenging the substantive reasonableness of his sentence.

¹The Honorable Greg Kays, United States District Judge for the Western District of Missouri.

Tolefree argues that his appeal is not barred because the phrase “his sentence” in the waiver refers only to the sentence of probation that he received at his original sentencing and not to the prison sentence he received when the court revoked his probation. We disagree. The relevant statute provides that when a court revokes a defendant’s probation, it will then “resentence the defendant” for the underlying offenses. *See* 18 U.S.C. § 3565(a)(2). As another circuit court recently explained, a sentence imposed after revocation of probation is “part and parcel of the sentence underlying the original conviction, not a freestanding, unrelated sentence.” *See United States v. Appleton*, 166 F.4th 606, 609 (6th Cir. 2026). Revocation of probation, therefore, simply returns the defendant “to where [he] started, from a sentencing standpoint, including being subjected to [his] negotiated appeal waiver.” *See id.* at 610.

Tolefree directs our attention to *United States v. Porter*, 905 F.3d 1175 (10th Cir. 2018). There, the government, relying on an appeal waiver contained in a plea agreement, moved to dismiss an appeal from a sentence imposed after a district court revoked a defendant’s supervised release. *See id.* at 1178. The Tenth Circuit declined to dismiss the case, emphasizing that the waiver didn't mention revocation sentences. *See id.* at 1179. Tolefree says that we should follow *Porter*.

But *Porter* is inapposite. A sentence imposed after revocation of probation is materially different from a sentence imposed after revocation of supervised release. When a court revokes probation, it must “resentence the defendant” considering the same sentencing criteria that it considers at an original sentencing. *See* 18 U.S.C. § 3565(a). In other words, the court performs a nunc pro tunc do-over of the sentence. When it revokes supervised release, however, it considers only some of the same criteria that it would at an original sentencing hearing. *See id.* at § 3583(e); *Esteras v. United States*, 606 U.S. 185, 195 (2025). A sentence imposed after a court revokes supervised release is meant to reflect the “forward-looking ends of sentencing” like deterrence, incapacitation, and rehabilitation; it is not meant to punish the defendant

for his original offenses of conviction. *See Esteras*, 606 U.S. at 196. So unlike a do-over, a sentence imposed following a revocation of supervised release is by its nature separate and distinct from the one the defendant received for his underlying offenses. It's therefore easy to understand why the court in *Porter* reached the conclusion it did in the circumstances before it. That's just not the situation we have here.

We have authority in our circuit that is more apposite. In *United States v. Cooney*, 875 F.3d 414 (8th Cir. 2017), a criminal defendant serving a prison sentence successfully petitioned the district court under 28 U.S.C. § 2255 to vacate his sentence and resentence him. But when he thought his new sentence should have been even lower, he appealed to our court, and the government moved to dismiss the appeal based on a waiver contained in his plea agreement. *See id.* at 416. The defendant contended that his appeal fell outside the scope of the agreement since the agreement didn't specifically mention resentencings. We nevertheless sided with the government and dismissed the appeal, explaining that it did not matter that the challenged sentence was imposed during resentencing following a successful collateral attack. We said, "Courts in this circuit and others agree: an appellate waiver bars an appeal after resentencing." *See id.* at 417. The principle applies just as well to a resentencing following the revocation of probation.

We therefore grant the government's motion to dismiss this appeal.
