

*KING V. UNITED STATES*: ELEVENTH CIRCUIT HOLDS  
THAT VALID WAIVER OF COLLATERAL SENTENCING  
CHALLENGE IN PLEA AGREEMENT BARRED MOTION TO  
VACATE BASED ON NEW RETROACTIVE  
CONSTITUTIONAL RULE

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In *King v. United States*, the United States Court of Appeals for the Eleventh Circuit addressed a claim brought by a criminal defendant in Georgia to vacate his sentence due to the recent United States Supreme Court decision *United States v. Davis* despite having previously pled guilty and waiving his right to appeal in exchange for a more lenient sentence.<sup>1</sup> On appeal, the Eleventh Circuit affirmed the United States District Court for the Northern District of Georgia’s decision to deny the defendant’s motion to vacate his 135-month prison sentence for conspiracy to commit bank robbery and using, carrying, or possessing a firearm during a crime of violence.<sup>2</sup>

The appellant, Deandre King, participated in a robbery of a Dunwoody, Georgia bank at gunpoint in 2012.<sup>3</sup> King and his three partners escaped from the bank with \$71,668.<sup>4</sup> The FBI determined the identity of the robbers through cell phone data and the bank’s surveillance system.<sup>5</sup> After conducting an investigation, the FBI arrested King and his partners four months later near another bank.<sup>6</sup> “[T]he car they were traveling in contained guns, masks, and gloves.”<sup>7</sup> King was initially charged with armed bank robbery, conspiracy under 18 U.S.C. § 1951, and using, carrying, or possessing a firearm during a “crime of violence” under U.S.C. § 924(c).<sup>8</sup> King entered plea negotiations with the government, ultimately pleading guilty to “a lesser set of charges: one

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<sup>1</sup> *King v. United States*, 41 F.4th 1363, 1366 (11th Cir. 2022); *see* *United States v. Davis*, 139 S. Ct. 2319 (2019).

<sup>2</sup> *King*, 41 F.4th at 1370.

<sup>3</sup> *Id.* at 1365.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 1365–66.

<sup>8</sup> *King*, 41 F.4th at 1366, 1368.

count of conspiracy to commit bank robbery under 18 U.S.C. § 371 and one count of using, carrying, or possessing a firearm during a crime of violence under 18 U.S.C. § 924(c)(1)(A)(ii).<sup>9</sup> Conspiracy to commit a Hobbs Act robbery was the “crime of violence” that justified the charge under § 924.<sup>10</sup> In addition to his agreement to plead guilty, King also waived “the right to appeal his conviction and sentence and the right to collaterally attack his conviction and sentence in any post-conviction proceeding.”<sup>11</sup>

After signing the plea agreement, King was sentenced to a total of 135 months in prison, “[fifty-one] months for the conspiracy offense and [eighty-four] months for the § 924(c) offense.”<sup>12</sup> King honored the plea agreement and did not directly appeal his conviction or sentence for the crimes.<sup>13</sup> Yet, King filed a collateral challenge in 2015 after the United States Supreme Court “held that the residual clause of the Armed Career Criminal Act [“ACCA”] was unconstitutionally vague.”<sup>14</sup> The district court denied King’s 2015 28 U.S.C. § 2255 motion to vacate his sentence because the ACCA had nothing to do with “determining [his] sentence—and . . . [his] appeal waiver barred any collateral challenge.”<sup>15</sup>

In 2019, “the Supreme Court applied its reasoning from *Johnson* to hold that the residual clause of § 924(c) was also unconstitutional” in *United States v. Davis*.<sup>16</sup> This ruling was important to King’s case because the government relied on the residual clause of § 924(c) for the use of conspiracy as a “crime of violence.”<sup>17</sup> After the Supreme Court’s decision in *Davis*, the Eleventh Circuit held the “new constitutional rule was retroactive to cases on collateral review.”<sup>18</sup> This led King to file a second § 2255 motion to challenge his conviction and 135-month prison sentence due to the holding in *Davis*.<sup>19</sup> Thereafter, the Eleventh Circuit ruled that conspiracy to commit Hobbs Act robbery is not considered a “crime of violence.”<sup>20</sup>

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<sup>9</sup> *Id.* at 1366.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* (internal quotation marks omitted).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *King*, 41 F.4th at 1366 (citing *Johnson v. United States*, 576 U.S. 591 (2015)).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*; *United States v. Davis*, 139 S. Ct. 2319, 2336 (2019).

<sup>17</sup> *King*, 41 F.4th at 1366.

<sup>18</sup> *Id.* (citing *In re Hammoud*, 931 F.3d 1032, 1039 (11th Cir. 2019)).

<sup>19</sup> *Id.* (citing *Brown v. United States*, 942 F.3d 1069, 1075–76 (11th Cir. 2019)).

<sup>20</sup> *Id.*

The district court denied King's second § 2255 motion, in which King claimed that he was entitled to an exception to the appeal waiver because his sentence was above the statutory maximum under the new constitutional rule created by *Davis*.<sup>21</sup> The district court explained "that King's appeal waiver prevented him from challenging his sentence."<sup>22</sup> The district court also held that King's claim was procedurally barred because he did not challenge his sentence on direct appeal.<sup>23</sup> King then appealed to the Eleventh Circuit, claiming that the decision in *Davis* provided him an exception to the appeal waiver in his plea agreement.<sup>24</sup>

The Eleventh Circuit reviewed the district court's decision *de novo*, addressing the validity and scope of King's appeal waiver in his plea agreement.<sup>25</sup> The court noted, "[a]s a rule, 'sentence appeal waivers, made knowingly and voluntarily, are enforceable.'"<sup>26</sup> King's agreement stated that the only reason King could challenge his conviction or sentence was the breach of "an agreed-upon [eighty-four]-month maximum for his firearms conviction" or if the court went outside the Sentencing Guidelines range.<sup>27</sup> King thought he held a "winning lottery ticket" because the decision in *Davis* made his conviction and sentence unlawful.<sup>28</sup> But that was not the case.

A plea agreement is treated like "a contract between the Government and a criminal defendant."<sup>29</sup> This contract-based approach is important to prosecutors and defendants alike.<sup>30</sup> "If the court steps back from the contract-based approach for appeal waivers, it will upset significant reliance interests . . . for both prosecutors and defendants."<sup>31</sup> If appeal waivers are not enforced, then the government would be deprived of "the benefit that it has bargained for and obtained in the plea agreement."<sup>32</sup> In turn, the government would be more reluctant to offer

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *King*, 41 F.4th at 1366.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 1367 (quoting *United States v. Bushert*, 997 F.2d 1343, 1345 (11th Cir. 1993)).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *King*, 41 F.4th at 1367 (quoting *United States v. Howle*, 166 F.3d 1166, 1168 (11th Cir. 1999)).

<sup>30</sup> *See id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* (quoting *United States v. Boyd*, 975 F.3d 1185, 1191 (11th Cir. 2020)).

plea bargains, providing fewer opportunities for criminal defendants to shave time off of their sentence.<sup>33</sup>

The Eleventh Circuit stated that “a defendant who signs an appeal waiver” gives up the right to appeal, even under circumstances where there has been a blatant error in his or her conviction.<sup>34</sup> The court applied this principle in *King*, stating that “even when a new constitutional rule might provide a strong basis for collateral attack, [it] enforce[s] an appeal waiver according to its terms.”<sup>35</sup>

However, the court noted that there are exceptions to this rule.<sup>36</sup> The court explained in *United States v. Bushert* that “even ‘judicially enforced, knowing and voluntary sentence appeal waivers’ do not bar a ‘collateral § 2255 action concerning certain subjects.’”<sup>37</sup> The exceptions are limited to jurisdictional defects, sentences based on unconstitutional factors, certain extreme circumstances, and sentences that exceed the maximum penalty allowed by statute.<sup>38</sup> King’s appeal relied on these exceptions.<sup>39</sup>

In his appeal, King rightfully asserted that, after *Davis*, conspiracy to commit a Hobbs Act robbery is not considered a “crime of violence,” but his habeas petition did not challenge a claim that he could appeal under his plea agreement.<sup>40</sup> More specifically, King’s claim did not challenge that his sentence was outside the sentencing guidelines or that his sentence was greater than eighty-four months for the § 924(c) charge.<sup>41</sup> King’s *Davis* claim also did not “fall within any of [the court’s] established categories of unwaivable claims.”<sup>42</sup> King relied on an addition to his plea deal—a provision that allowed him to appeal any sentence under 924(c) that exceeded the Sentencing Guidelines.<sup>43</sup> King argued that, since the ruling in *Davis* removed his conviction from a “crime of violence” designation, he had in fact committed no crime at

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<sup>33</sup> *See id.*

<sup>34</sup> *Id.*; *Howle*, 166 F.3d at 1169.

<sup>35</sup> *King*, 41 F.4th at 1367.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* (quoting *United States v. Bushert*, 997 F.2d 1343, 1350 n.17 (11th Cir. 1993)).

<sup>38</sup> *King*, 41 F.4th at 1367; *see* *United States v. DiFalco*, 837 F.3d 1207, 1215 (11th Cir. 2016); *Bushert*, 997 F.2d at 1350 n.18; *Howle*, 166 F.3d at 1169 n.5.

<sup>39</sup> *King*, 41 F.4th at 1367.

<sup>40</sup> *Id.* at 1368.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

all under 924(c); thus, any sentence he received “exceeded the statutory maximum.”<sup>44</sup>

The Eleventh Circuit rejected this argument, however, stating that “[t]he ‘maximum penalty provided by statute’ referenced in *Bushert* is not a moving target that changes with new legal developments—it is the maximum statutory penalty in effect at the time of sentencing.”<sup>45</sup> The Eleventh Circuit applies “the meaning understood by both parties when the appeal waiver was signed” so that the statutory maximum does not have to be reevaluated every time a new rule is created by the Supreme Court.<sup>46</sup> When signing a plea agreement both parties understand that a higher court may create a new rule involving a defendant’s conviction or sentence.<sup>47</sup> Therefore, an appeal waiver eliminates any risk of a plea agreement being attacked by a defendant—either by direct appeal or through collateral review—when new legal rules develop.<sup>48</sup> The Eleventh Circuit disagreed with King because his sentence did not exceed the statutory maximum *at the time of his sentencing*.<sup>49</sup> King’s sentence was eighty-four months, the statutory maximum at the time for a § 924(c) conviction was life in prison.<sup>50</sup> This sentence clearly did not violate the statutory-maximum exception articulation in *Bushert*.<sup>51</sup>

In *King v. United States*, the Eleventh Circuit recognized that if appeal waivers were not enforced by courts, except for certain narrow exceptions, then both prosecutors and defendants would be harmed.<sup>52</sup> The Eleventh Circuit found that King’s motion did not fall within any of the exceptions that allowed an appeal when a defendant signed an appeal waiver.<sup>53</sup> The court looked closely at the exception for a sentence exceeding the statutory maximum but ultimately determined that King’s sentence did not fall within this exception because King’s sentence did not violate the statutory maximum at the time he was

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<sup>44</sup> *Id.*

<sup>45</sup> *King*, 41 F.4th at 1368.

<sup>46</sup> *See id.* at 1369.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *King*, 41 F.4th at 1369.

<sup>52</sup> *Id.* at 1367.

<sup>53</sup> *Id.* at 1369.

sentenced.<sup>54</sup> Thus, the Eleventh Circuit affirmed the denial of King's motion to vacate his sentence.<sup>55</sup>

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<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 1370.