

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,
Plaintiff,

vs.

Case No. 07-10143-01-JTM

TOMMY L. ANDERSON, SR.,
Defendant.

MEMORANDUM AND ORDER

This matter is before the court on the defendant Tommy Anderson's Motion for Relief under 28 U.S.C. § 2255. Anderson argues (Dkt. 499) that the sentence imposed was under a misapprehension as to the controlling aspect of the United States Sentencing Guidelines, and further that he should not be subjected to a U.S.S.G. § 2D1.1(b)(1) offense level increase. The court will deny the relief sought.

The court accepted Anderson's plea of guilty pursuant to Rule 11(c)(1)(C). Sentence was imposed with the acknowledgement that the Guidelines were advisory in nature. (Plea Agmt., at ¶ 4). The plea agreement specifically provided for an agreed-upon sentence of 120 months. (¶ 3). Further, Anderson waived appeal as part of his plea agreement. (¶ 10). Such a waiver is generally binding, *see United States v. Cockerham*, 237 F.3d 1179, 1183 (10th Cir. 2001). Here, Anderson has not met either exception to the waiver clause, as he received the minimum sentence of 120 months and he did not receive an above-guideline sentence, and he has not made a claim of ineffective assistance

of counsel in the negotiation of his plea agreement waiver of appeal. By careful colloquy (Dkt. 420, 30-32), the court determined that Anderson knowingly and voluntarily entered his plea and waived his rights to challenge the sentence imposed. There is no basis herein for failing to enforce the plea agreement waiver agreed to by the defendant.

IT IS ACCORDINGLY ORDERED this 31st day of August, 2010, that the defendant's Motion to Vacate (Dkt. 498) is hereby denied.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE