

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 10-2815

United States of America,

Appellee,

v.

Guillermo Villanueva-Garcia,

Appellant.

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* Appeal from the United States
* District Court for the
* District of Minnesota.
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* [UNPUBLISHED]
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Submitted: March 21, 2011

Filed: March 24, 2011

Before MELLOY, GRUENDER, and BENTON, Circuit Judges.

PER CURIAM.

Guillermo Villanueva-Garcia (Garcia) pled guilty to a drug offense pursuant to a plea agreement in which he waived all rights to appeal his sentence if the court sentenced him to no more than 60 months in prison, the statutory mandatory minimum. The district court¹ sentenced him to 60 months in prison, and he appeals. Appellate counsel has moved to withdraw, and has filed a brief under *Anders v. California*, 386 U.S. 738 (1967), challenging the length of the sentence. After careful

¹The Honorable Richard H. Kyle, United States District Judge, District of Minnesota.

review, this court will enforce the appeal waiver. *See United States v. Andis*, 333 F.3d 886, 889-92 (8th Cir. 2003) (en banc) (court should enforce appeal waiver and dismiss appeal where it falls within scope of waiver, both plea agreement and waiver were entered into knowingly and voluntarily, and no miscarriage of justice would result). The record shows the requisite knowledge and voluntariness; the appeal waiver applies because Garcia was sentenced to no more than 60 months; and no miscarriage of justice would result from enforcing the waiver. *See United States v. McIntosh*, 492 F.3d 956, 960 (8th Cir. 2007) (appeal waiver was knowing and voluntary when it was included in plea agreement, court questioned defendant about his understanding of waiver, and defendant did not argue on appeal that waiver was unknowing or involuntary). An independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75 (1988), reveals no nonfrivolous issue not covered by the waiver.

Accordingly, this court grants counsel's motion to withdraw and dismisses this appeal.
