

United States Court of Appeals
For the Eighth Circuit

No. 16-3036

United States of America

Plaintiff - Appellee

v.

Phillip Daren Shockey

Defendant - Appellant

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

Submitted: May 3, 2017

Filed: January 3, 2018

[Unpublished]

Before COLLOTON, BOWMAN, and KELLY, Circuit Judges.

PER CURIAM.

Phillip Shockey appeals after he pleaded guilty with a written plea agreement containing an appeal waiver to conspiring to commit bank fraud and the District

Court¹ sentenced him to a prison term within the calculated United States Sentencing Guidelines range. On appeal, counsel has filed a brief under Anders v. California, 386 U.S. 738 (1967), and a supplemental brief. Counsel acknowledges the appeal waiver, questions the reasonableness of Shockey's prison term, and requests leave to withdraw. Shockey has filed two pro se briefs. He claims ineffective assistance of counsel and challenges the District Court's Guidelines calculations.

To begin, we decline to consider Shockey's ineffective-assistance claim on direct appeal. See United States v. Ramirez-Hernandez, 449 F.3d 824, 826–27 (8th Cir. 2006) (noting that “[c]laims of ineffective assistance of counsel . . . are usually best litigated in collateral proceedings” where the record can be properly developed). Further, after careful review, we conclude that the appeal waiver is enforceable and applicable to the remaining issues raised on appeal. See United States v. Scott, 627 F.3d 702, 704 (8th Cir. 2010) (reviewing de novo the validity and applicability of an appeal waiver); United States v. Andis, 333 F.3d 886, 890–92 (8th Cir.) (en banc) (discussing enforcement of appeal waivers), cert. denied, 540 U.S. 997 (2003). Finally, we have independently reviewed the record under Penson v. Ohio, 488 U.S. 75 (1988), and have found no non-frivolous issues for appeal outside the scope of the waiver.

We grant counsel leave to withdraw and dismiss this appeal.

¹The Honorable M. Douglas Harpool, United States District Judge for the Western District of Missouri.