

United States Court of Appeals
For the Eighth Circuit

No. 22-1403

United States of America

Plaintiff - Appellee

v.

Phillip Harlan King, III

Defendant - Appellant

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

Submitted: May 31, 2022

Filed: June 6, 2022

[Unpublished]

Before COLLOTON, GRUENDER, and BENTON, Circuit Judges.

PER CURIAM.

Phillip Harlan King, III appeals after he pled guilty to being a felon in possession of a firearm pursuant to a plea agreement containing an appeal waiver. Having jurisdiction under 28 U.S.C. § 1291, this court dismisses the appeal based on the appeal waiver.

King objects to the above-Guidelines sentence the district court¹ imposed. Counsel has moved for leave to withdraw and has filed a brief under *Anders v. California*, 386 U.S. 738 (1967) in which he acknowledges the appeal waiver but challenges a 4-level Guidelines enhancement under U.S.S.G § 2K2.1(b)(6)(B) and challenges the sentence as unreasonable. The appeal waiver is enforceable, as counsel's arguments fall within the scope of the appeal waiver. The record shows that King entered into the plea agreement and the appeal waiver knowingly and voluntarily, and no miscarriage of justice would result from enforcing the waiver. *See United States v. Scott*, 627 F.3d 702, 704 (8th Cir. 2010) (de novo review); *United States v. Andis*, 333 F.3d 886, 889-92 (8th Cir. 2003) (en banc) (appeal waiver will be enforced if appeal falls within scope of waiver, defendant knowingly and voluntarily entered into waiver and plea agreement, and enforcing waiver would not result in miscarriage of justice); *see also* 18 U.S.C. § 924(a)(2) (maximum prison sentence is 120 months).

This court has reviewed the record independently under *Penson v. Ohio*, 488 U.S. 75 (1988), and has found no non-frivolous issues outside the scope of the appeal waiver.

The appeal is dismissed, and counsel's motion to withdraw is granted.

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