

United States Court of Appeals
For the Eighth Circuit

No. 22-3412

United States of America

Plaintiff - Appellee

v.

Herbert Keith Wells, also known as Get 'Em

Defendant - Appellant

Appeal from United States District Court
for the District of North Dakota

Submitted: February 14, 2023

Filed: February 17, 2023

[Unpublished]

Before COLLOTON, BENTON, and GRASZ, Circuit Judges.

PER CURIAM.

Herbert Wells appeals the sentence imposed by the district court¹ after he pled guilty to a drug offense, pursuant to a plea agreement containing an appeal waiver.

¹The Honorable Peter D. Welte, Chief Judge, United States District Court for the District of North Dakota.

His counsel has moved for leave to withdraw and has filed a brief under *Anders v. California*, 386 U.S. 738 (1967), challenging the sentence.

Upon careful review, we conclude that the appeal waiver is valid, enforceable, and applicable to the issue raised in this appeal. *See United States v. Scott*, 627 F.3d 702, 704 (8th Cir. 2010) (reviewing validity and applicability of appeal waiver de novo); *United States v. Andis*, 333 F.3d 886, 889-92 (8th Cir. 2003) (en banc) (enforcing appeal waiver if appeal falls within scope of waiver, defendant knowingly and voluntarily entered into plea agreement and waiver, and it would not result in miscarriage of justice). We have also independently reviewed the record under *Penson v. Ohio*, 488 U.S. 75 (1988), and have found no non-frivolous issues for appeal falling outside the scope of the waiver. Accordingly, we dismiss this appeal based on the appeal waiver, and we grant counsel's motion to withdraw.
