

**United States Court of Appeals**  
**For the Eighth Circuit**

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No. 23-1336

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United States of America

*Plaintiff - Appellee*

v.

Francisco A. Magallon, also known as Pancho

*Defendant - Appellant*

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

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Submitted: August 9, 2023

Filed: August 11, 2023

[Unpublished]

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Before GRUENDER, BENTON, and STRAS, Circuit Judges.

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PER CURIAM.

Francisco A. Magallon appeals the Guidelines-range sentence the district court<sup>1</sup> imposed after he pled guilty to a conspiracy drug offense pursuant to a plea

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<sup>1</sup>The Honorable Roseann A. Ketchmark, United States District Judge for the Western District of Missouri.

agreement containing an appeal waiver. Having jurisdiction under 28 U.S.C. § 1291, this court dismisses the appeal based on the appeal waiver.

Counsel has moved for leave to withdraw and filed a brief under *Anders v. California*, 386 U.S. 738 (1967), acknowledging the appeal waiver, but challenging the sentence as substantively unreasonable. This court concludes that the appeal waiver is enforceable. Counsel's argument falls within the scope of the appeal waiver, the record shows that Magallon 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. § 841(b)(1)(B) (sentence of 10 years to life in prison).

This court has reviewed the record independently under *Penon 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.

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