

United States Court of Appeals
For the Eighth Circuit

No. 23-2373

United States of America

Plaintiff - Appellee

v.

Kevin Grant McMillan

Defendant - Appellant

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

Submitted: January 30, 2024

Filed: February 2, 2024

[Unpublished]

Before LOKEN, COLLOTON, and GRASZ, Circuit Judges.

PER CURIAM.

Kevin McMillan appeals the sentence the district court¹ imposed after he pled guilty to knowingly engaging in a child exploitation enterprise. The plea came pursuant to a plea agreement in which McMillan waived his right to an appeal. His counsel has moved for leave to withdraw and filed a brief under *Anders v. California*, 386 U.S. 738 (1967), challenging the substantive reasonableness of the sentence. McMillan has also moved for appointment of new counsel.

Upon careful review, we conclude 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 appeal waiver. Accordingly, we dismiss the appeal based on the appeal waiver, grant counsel's motion to withdraw, and deny McMillan's motions for appointment of new counsel.

¹The Honorable Stephen R. Bough, United States District Judge for the Western District of Missouri.