

United States Court of Appeals
For the Eighth Circuit

No. 24-1850

United States of America

Plaintiff - Appellee

v.

Gary Graham

Defendant - Appellant

Appeal from United States District Court
for the District of Nebraska - Lincoln

Submitted: August 15, 2024

Filed: August 23, 2024

[Unpublished]

Before GRUENDER, SHEPHERD, and ERICKSON, Circuit Judges.

PER CURIAM.

Gary Graham appeals after he pleaded guilty to a drug offense pursuant to a plea agreement containing an appeal waiver, and the district court¹ sentenced him to

¹The Honorable John M. Gerrard, United States District Judge for the District of Nebraska.

132 months in prison. 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 and the district court's denial of pretrial motions. Graham has filed a pro se brief claiming that counsel was ineffective in presenting his pretrial suppression motions.

Upon careful review, we conclude that the appeal waiver is valid, enforceable, and applicable to the issues raised by counsel in this appeal. See United States v. Scott, 627 F.3d 702, 704 (8th Cir. 2010) (validity and applicability of an appeal waiver is reviewed de novo); United States v. Andis, 333 F.3d 886, 889-92 (8th Cir. 2003) (en banc) (appeal waiver will be enforced if the appeal falls within the scope of the waiver, the defendant knowingly and voluntarily entered into the plea agreement and the waiver, and enforcing the waiver would not result in a miscarriage of justice). We decline to address Graham's ineffective-assistance-of-counsel claim in this direct appeal. See United States v. Hernandez, 281 F.3d 746, 749 (8th Cir. 2002).

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 grant counsel's motion to withdraw. Appellant's pro se motion for leave to file a second supplemental brief and for bond review is denied as moot.
