

United States Court of Appeals
For the Eighth Circuit

No. 24-1881

United States of America

Plaintiff - Appellee

v.

Brian Ruth, Sr., also known as Brian J. Ruth

Defendant - Appellant

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

Submitted: August 20, 2024

Filed: August 23, 2024

[Unpublished]

Before GRUENDER, SHEPHERD, and ERICKSON, Circuit Judges.

PER CURIAM.

Brian Ruth, Sr. appeals after he pleaded guilty to wire fraud and money laundering pursuant to a plea agreement containing an appeal waiver and the district

court¹ sentenced him to 108 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. Ruth has filed a pro se brief claiming that counsel was ineffective and suggesting his plea was involuntary.

Upon careful review, we conclude that Ruth knowingly and voluntarily entered into the plea agreement, as he explicitly confirmed that he understood the maximum sentence he faced and the possibility that the court could sentence him above the Guidelines range. See United States v. Green, 521 F.3d 929, 931 (8th Cir. 2008) (whether a plea was knowing and voluntary is reviewed de novo); United States v. Andis, 333 F.3d 886, 890-91 (8th Cir. 2003) (en banc) (one important way district court can ensure plea agreement is knowing and voluntary is to question defendant about decision to enter into agreement); see also Nguyen v. United States, 114 F.3d 699, 703 (8th Cir. 1997) (defendant's representations during plea-taking carry strong presumption of verity).

We also 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 Ruth's ineffective-assistance-of-counsel claim in this direct appeal. See United States v. Hernandez, 281 F.3d 746, 749 (8th Cir. 2002).

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

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 in part based on the appeal waiver, otherwise affirm, and we grant counsel's motion to withdraw.
