

United States Court of Appeals
For the Eighth Circuit

No. 24-1542

United States of America

Plaintiff - Appellee

v.

Simon L. Wertenberger

Defendant - Appellant

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

Submitted: September 30, 2024

Filed: October 3, 2024

[Unpublished]

Before BENTON, KELLY, and ERICKSON, Circuit Judges.

PER CURIAM.

Simon L. Wertenberger appeals the district court's¹ denial of his second motion to withdraw his guilty plea. Having jurisdiction under 28 U.S.C. § 1291, this court affirms.

¹The Honorable David Gregory Kays, United States District Judge for the Western District of Missouri.

Counsel moved for leave to withdraw and filed a brief under *Anders v. California*, 386 U.S. 738 (1967), arguing that Wertenberger established fair and just reasons to withdraw his guilty plea. *See United States v. Ramirez-Hernandez*, 449 F.3d 824, 826 (8th Cir. 2006) (district court may permit withdrawal of guilty plea if there is a fair and just reason for the withdrawal).

Upon careful review, this court declines to enforce the appeal waiver, and concludes that the district court did not abuse its discretion in denying the motion to withdraw the guilty plea. *See United States v. Scott*, 627 F.3d 702, 704 (8th Cir. 2010) (de novo review of validity and applicability of appeal waiver); *Ramirez-Hernandez*, 449 F.3d at 826 (denial of motion to withdraw guilty plea reviewed for abuse of discretion; even if fair and just reason for withdrawal exists, court must also consider whether defendant asserts his innocence of charge, length of time between guilty plea and motion to withdraw it, and whether government will be prejudiced if court grants motion). This court has independently reviewed the record under *Penson v. Ohio*, 488 U.S. 75 (1988), and has found no non-frivolous issues for appeal.

The judgment is affirmed, and counsel's motion to withdraw is granted.
