

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with

Fed. R. App. P. 32.1

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted March 10, 2010

Decided March 10, 2010

Before

WILLIAM J. BAUER, *Circuit Judge*

TERENCE T. EVANS, *Circuit Judge*

DIANE S. SYKES, *Circuit Judge*

No. 09-2357

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JUAN ALBERTO CASTILLO,

Defendant-Appellant.

Appeal from the United States District
Court for the Northern District of Illinois,
Eastern Division

No. 05 CR 601-8

Rebecca R. Pallmeyer,

Judge.

ORDER

Juan Alberto Castillo pleaded guilty to conspiring to import 1 kilogram or more of heroin into the United States, *see* 21 U.S.C. § 963; 18 U.S.C. § 2, and received a sentence of 120 months' imprisonment. In his plea agreement, he waived his right to appeal his conviction and sentence. He filed a notice of appeal, but his appointed counsel seeks to withdraw under *Anders v. California*, 386 U.S. 738 (1967), because he cannot identify any nonfrivolous argument to pursue. Castillo responded to his lawyer's submissions. *See* CIR. R. 51(b). We limit our review to the potential issues identified in the facially adequate brief

submitted by counsel and in Castillo's response. See *United States v. Schuh*, 289 F.3d 968, 973-74 (7th Cir. 2002).

Castillo has provided no hint that he wishes to have his guilty plea set aside, so counsel rightly omits a discussion of the plea's voluntariness or the plea colloquy. See *United States v. Knox*, 287 F.3d 667, 671 (7th Cir. 2002).

Both counsel and Castillo consider whether Castillo could challenge his sentence. Counsel focuses on the possible applicability of a safety-valve reduction, see U.S.S.G. § 5C1.2, and Castillo on the calculation of his criminal history points. See U.S.S.G. § 4A1.1. Both of these arguments, however, are foreclosed by the appeal waiver. If the guilty plea stands, so does the waiver. See *Nunez v. United States*, 546 F.3d 450, 453 (7th Cir. 2008).

Finally, counsel, who did not represent Castillo at trial, also considers whether Castillo could argue that his trial counsel was ineffective. But a challenge to the adequacy of counsel's performance is best explored in a collateral proceeding so that a more complete record can be developed. See *Massaro v. United States*, 538 U.S. 500, 504-05 (2003); *United States v. Harris*, 394 F.3d 543, 557-58 (7th Cir. 2005).

For the foregoing reasons, we GRANT counsel's motion to withdraw and DISMISS Castillo's appeal.