

NONPRECEDENTIAL DISPOSITION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 January 23, 2024

Decided January 24, 2024

Before

DIANE P. WOOD, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 23-1645

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

HECTOR CASTANEDA,
Defendant-Appellant.

Appeal from the United States District
Court for the Northern District of
Indiana, Fort Wayne Division.

No. 1:12CR33-001

Holly A. Brady,
Chief Judge.

ORDER

Hector Castaneda pleaded guilty to one count of conspiracy to distribute and to possess five kilograms or more of a controlled substance, in violation of 21 U.S.C. §§ 841(a)(1), 846. The district court imposed a within-guidelines sentence of 292 months' imprisonment and 5 years of supervised release. In his plea agreement, Castaneda "expressly waive[d] [his] right to appeal or to contest" the "conviction," "all components of [his] sentence" including "the manner in which" they were determined or imposed "on any other ground than a claim of ineffective assistance of counsel." But

he appeals nonetheless. His appointed counsel asserts that the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738 (1967). Counsel's brief explains the nature of the case and raises potential issues that an appeal like this would be expected to involve, and Castaneda has responded to the brief, *see* CIR. R. 51(b). Because counsel's brief appears thorough, we limit our review to subjects that counsel and Castaneda discuss. *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

Counsel tells us that Castaneda wishes to challenge his guilty plea, but we agree with counsel that such a challenge would be frivolous. Before accepting the guilty plea, the district court complied with Rule 11 of the Federal Rules of Criminal Procedure, rendering an appellate challenge to the plea's acceptance futile. *See United States v. Davenport*, 719 F.3d 616, 618 (7th Cir. 2013). The judge determined that Castaneda understood the effect of his plea, *see* FED. R. CRIM. P. 11(b)(1), by confirming that Castaneda understood the charge against him, *id.* at (G), the penalties he faced (ten years to life imprisonment, a minimum of five years' supervised release, possible fines and fees, and the potential effect on his immigration status), *id.* at (H)–(O), and the trial and appellate rights he was waiving by pleading guilty, *id.* at (A)–(E). No evidence negates these sworn statements, which are presumed true. *See United States v. Barr*, 960 F.3d 906, 917 (7th Cir. 2020).

Castaneda proposes arguing that because, in his view, the government breached the plea agreement before sentencing, the district court should have rescinded its acceptance of the guilty plea. Specifically, Castaneda believes that the government breached the agreement by supporting the probation office's recommendation to apply two enhancements under the Sentencing Guidelines (two points for maintaining a drug premises and four points for his leadership role in the scheme). Because Castaneda never moved to have his guilty plea withdrawn on this (or any) ground, we would review for plain error the district court's failure to rescind its acceptance of the plea. *United States v. Williams*, 946 F.3d 968, 971 (7th Cir. 2020). But for two reasons no error, let alone a plain one, occurred.

First, the government made no written promise to refrain from supporting these enhancements. And it complied with the written promises that it did make: It promised not to seek, and did not seek, an enhanced penalty under 21 U.S.C. § 851 (based on Castaneda's prior drug convictions). And as promised, it moved for a reduction in offense level based on his acceptance of responsibility, recommended a sentence at the bottom of the guideline range, and dismissed three other counts.

Second, Castaneda could not plausibly argue that the government breached any unwritten promises. In his plea agreement, he stated that “no promises have been made to [Castaneda] other than those contained in this agreement.” And at the change-of-plea hearing Castaneda confirmed that this statement was correct.

Counsel also rightly concludes that Castaneda’s appeal waiver would render any challenge to his sentence frivolous. An appeal waiver “stands or falls” with the underlying guilty plea, *United States v. Nulf*, 978 F.3d 504, 506 (7th Cir. 2020), and, as we have just discussed, Castaneda’s guilty plea is valid. Further, we agree with counsel that no exception to his appellate waiver could arguably apply—Castaneda’s sentence does not exceed the statutory maximum of life imprisonment and, as the sentencing transcript shows, the judge did not consider any constitutionally impermissible factors at sentencing. *See id.* Moreover, the waiver forgoes any appellate challenge to the term and conditions of supervised release, which are also within applicable statutory limits.

Last, Castaneda wishes to challenge his conviction based on ineffective assistance of counsel. This challenge, to the extent it would be consistent with the terms and conditions of his plea agreement, is best saved for collateral review, where an evidentiary basis can be fully developed. *See Massaro v. United States*, 538 U.S. 500, 503–05 (2003).

Accordingly, we GRANT counsel’s motion to withdraw and DISMISS the appeal.