

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 09-3774

United States of America,

Appellee,

v.

Antonio R. Azpeitia,

Appellant.

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* Appeal from the United States
* District Court for the
* District of Nebraska.
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* [UNPUBLISHED]
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Submitted: June 29, 2010

Filed: July 9, 2010

Before WOLLMAN, COLLOTON, and GRUENDER, Circuit Judges.

PER CURIAM.

Pursuant to a written plea agreement containing a waiver of his right to appeal, Antonio Azpeitia pleaded guilty to possession with intent to distribute 5 grams or more of (actual) methamphetamine, in violation of 21 U.S.C. § 841(a)(1) & (b)(1). The district court¹ sentenced Azpeitia to 140 months in prison and 5 years of supervised release. On appeal, his counsel has moved to withdraw and has filed a brief under Anders v. California, 386 U.S. 738 (1967). The government has moved to dismiss the appeal.

¹The Honorable Lyle E. Strom, United States District Judge for the District of Nebraska.

We will enforce the appeal waiver in this case because Azpeitia's appeal falls within the scope of the waiver, the record shows the requisite knowledge and voluntariness, and enforcing the appeal waiver would not constitute a miscarriage of justice. See United States v. Andis, 333 F.3d 886, 889-92 (8th Cir. 2003) (en banc) (court should enforce appeal waiver and dismiss appeal where it falls within scope of waiver, both plea agreement and waiver were entered into knowingly and voluntarily, and no miscarriage of justice would result; one important way district court can ensure plea agreement and appeal waiver are knowing and voluntary is to question defendant properly about decision to enter agreement and to waive right to appeal); see also United States v. Estrada-Bahena, 201 F.3d 1070, 1071 (8th Cir. 2000) (per curiam) (enforcing appeal waiver in Anders case).

Having independently reviewed the record under Penon v. Ohio, 488 U.S. 75, 80 (1988), we have found no nonfrivolous issues not covered by the appeal waiver. Accordingly, we grant counsel leave to withdraw, and we grant the government's motion to dismiss this appeal.
