

United States Court of Appeals
For the Eighth Circuit

No. 12-1550/12-1551/12-1552

United States of America

Plaintiff - Appellee

v.

Robert Michael Rutan

Defendant - Appellant

Appeals from United States District Court
for the Northern District of Iowa - Cedar Rapids

Submitted: October 30, 2012
Filed: November 6, 2012
[Unpublished]

Before BYE, GRUENDER, and BENTON, Circuit Judges.

PER CURIAM.

Robert Rutan pleaded guilty to bank robbery, in violation of 18 U.S.C. § 2113(a). At the time of the bank robbery, Rutan was serving two terms of supervised release. The district court¹ sentenced him to 240 months in prison for the

¹The Honorable Mark W. Bennett, United States District Judge for the Northern District of Iowa.

bank-robbery offense, revoked his two supervised-release terms, and sentenced him to 24 months in prison for each revocation, with all three prison terms to be served consecutively. On appeal, Rutan's counsel has moved to withdraw, and has filed a brief under *Anders v. California*, 386 U.S. 738 (1967), arguing that the court erred in ordering the prison terms to be served consecutively. Rutan has filed a pro se supplemental brief, challenging the validity of his guilty plea.

Upon careful review of the record--which includes a written plea agreement containing an appeal waiver--we conclude that the appeal waiver bars our review of Rutan's pro se challenge to his guilty plea, but not counsel's argument that the district court erred in ordering that the three prison terms be served consecutively. *See United States v. Andis*, 333 F.3d 886, 889-92 (8th Cir. 2003) (en banc) (setting forth standard for enforcing appeal waivers). We further conclude that it was not unreasonable for the court to impose consecutive prison terms. *See* U.S.S.G. § 7B1.3, cmt. n.4 (Sentencing Commission recommends any sentence of imprisonment for criminal offense that is imposed after revocation of supervised release run consecutively to any term of imprisonment imposed upon revocation); *see also United States v. Lee*, 545 F.3d 678, 680 (8th Cir. 2008) (per curiam) (with limited exception, district court's decision to impose consecutive or concurrent sentence reviewed only for reasonableness). Finally, having independently reviewed the record under *Penson v. Ohio*, 488 U. S. 75 (1988), we find no nonfrivolous issue for appeal.

Accordingly, we enforce the appeal waiver with respect to Rutan's challenge to his guilty plea, we affirm the sentences imposed, and we grant counsel permission to withdraw.