

United States Court of Appeals
For the Eighth Circuit

No. 22-3614

United States of America

Plaintiff - Appellee

v.

Dwayne Warren Gerard, Sr.

Defendant - Appellant

Appeal from United States District Court
for the District of North Dakota - Western

Submitted: September 18, 2023

Filed: October 31, 2023

[Unpublished]

Before COLLTON, GRASZ, and KOBES, Circuit Judges.

PER CURIAM.

Dwayne Gerard pleaded guilty to sexually exploiting children, 18 U.S.C. § 2251(a), (e). His only claim of error is that his sentence is substantively unreasonable. He concedes that he waived his right to appeal in his plea agreement but argues that enforcing the waiver would result in a miscarriage of justice. See United States v. Andis, 333 F.3d 886, 889–90 (8th Cir. 2003) (en banc). Although

the district court¹ imposed a sentence two to three times greater than what the parties recommended, it is still a below-Guidelines sentence. So enforcing the waiver would not work a miscarriage of justice. See United States v. Pierre, 912 F.3d 1137, 1143–44 (8th Cir. 2019). We dismiss the appeal.

¹The Honorable Daniel L. Hovland, United States District Judge for the District of North Dakota.