

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4304

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOHN GIBSON, III, a/k/a Cuddy Mo,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore.
Ellen L. Hollander, District Judge. (1:18-cr-00431-ELH-3)

Submitted: October 15, 2019

Decided: October 17, 2019

Before GREGORY, Chief Judge, and THACKER and RUSHING, Circuit Judges.

Affirmed in part and dismissed in part by unpublished per curiam opinion.

Gary Proctor, LAW OFFICES OF GARY E. PROCTOR, LLC, Baltimore, Maryland, for
Appellant. Lauren Elizabeth Perry, Paul Anthony Riley, OFFICE OF THE UNITED
STATES ATTORNEY, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

John Gibson, III, seeks to appeal the 84-month sentence imposed following his guilty plea to conspiracy to distribute and possess with intent to distribute controlled substances, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), 846 (2012), and distribution and possession with intent to distribute controlled substances, in violation of 21 U.S.C. §§ 841(a)(1); 18 U.S.C. § 2 (2012). Gibson’s counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), questioning whether Gibson’s sentence is reasonable. Although informed of his right to file a pro se supplemental brief, Gibson has not done so.

The Government has filed a motion to dismiss the appeal on the ground that Gibson’s appeal is barred by the appeal waiver included in the plea agreement. We review de novo the validity of an appeal waiver. *United States v. Cohen*, 888 F.3d 667, 678 (4th Cir. 2018). Where, as here, the Government seeks to enforce the appeal waiver and has not breached the plea agreement, we will enforce the waiver if it is valid and the issue being appealed falls within the waiver’s scope. *United States v. Manigan*, 592 F.3d 621, 627 (4th Cir. 2010). A defendant validly waives his appeal rights if he agreed to the waiver “knowingly and intelligently.” *Id.* To determine whether a waiver is knowing and intelligent, “we consider the totality of the circumstances, including the experience and conduct of the defendant, his educational background, and his knowledge of the plea agreement and its terms.” *United States v. McCoy*, 895 F.3d 358, 362 (4th Cir.) (internal quotation marks omitted), *cert. denied*, 139 S. Ct. 494 (2018). Generally, “if a district court questions a defendant regarding the waiver of appellate rights during the [Fed. R. Crim. P.]

11 colloquy and the record indicates that the defendant understood the full significance of the waiver, the waiver is valid.” *Id.* (internal quotation marks omitted).

Upon review of the plea agreement and the transcript of the Rule 11 hearing, we conclude that Gibson knowingly and voluntarily waived his right to appeal and that his challenge to his sentence falls squarely within the compass of the appellate waiver. Accordingly, we grant the Government’s motion in part.

Pursuant to *Anders*, we have reviewed the entire record and have found no meritorious issues for appeal that fall outside the scope of the appeal waiver. We therefore affirm the remainder of the district court’s judgment. This court requires that counsel inform Gibson, in writing, of the right to petition the Supreme Court of the United States for further review. If Gibson requests that a petition be filed, but counsel believes that such a petition would be frivolous, then counsel may move in this court for leave to withdraw from representation. Counsel’s motion must state that a copy thereof was served on Gibson.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED IN PART,
DISMISSED IN PART*