UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-4553

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JENNIFER MAE HUTCHENS,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Newport News. David J. Novak, District Judge. (4:20-cr-00016-DJN-LRL-1)

Submitted: June 30, 2022 Decided: July 19, 2022

Before KING, THACKER, and RICHARDSON, Circuit Judges.

Dismissed in part and affirmed in part by unpublished per curiam opinion.

ON BRIEF: Chad G. Dorsk, DORSK LAW OFFICE, PLC, Norfolk, Virginia, for Appellant. Lisa Rae McKeel, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Newport News, Virginia, for Appellee.

PER CURIAM:

Jennifer Mae Hutchens pled guilty, pursuant to a written plea agreement, to one count of production of child pornography, in violation of 18 U.S.C. § 2251(a). The district court imposed a below-Guidelines-range sentence of 276 months' imprisonment. Hutchens' counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), stating that there are no meritorious grounds for appeal. Hutchens has filed a supplemental pro se brief, challenging the length of her sentence and expressing concern that the sentencing judge was biased against her because he conducted her coconspirator's trial. The Government moves to dismiss the appeal as barred by the appellate waiver included in Hutchens' plea agreement. We affirm in part and dismiss in part.

We review the validity of an appellate waiver de novo and "will enforce the waiver if it is valid and the issue appealed is within the scope of the waiver." *United States v. Adams*, 814 F.3d 178, 182 (4th Cir. 2016). A waiver is valid if it is "knowing and voluntary." *Id.* To determine whether a waiver is knowing and voluntary, "we consider the totality of the circumstances, including the experience and conduct of the defendant, [her] educational background, and [her] knowledge of the plea agreement and its terms." *United States v. McCoy*, 895 F.3d 358, 362 (4th Cir. 2018) (internal quotation marks omitted). "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). Our review of the record confirms that Hutchens knowingly and voluntarily waived her right to appeal, and that the district court properly found that her

plea was supported by an adequate factual basis. We therefore conclude that the waiver is valid.

We have noted that a "narrow class of claims" may be raised despite a valid general appellate waiver, *United States v. Lemaster*, 403 F.3d 216, 220 n.2 (4th Cir. 2005), reasoning that an appellate waiver "cannot prohibit [a] defendant from challenging . . . the sentencing court['s] violat[ion of] a fundamental constitutional or statutory right that was firmly established at the time of sentencing," *United States v. Archie*, 771 F.3d 217, 223 (4th Cir. 2014). To the extent that Hutchens' allegation of judicial bias asserts that the sentencing court violated her right to due process, "to prevail in a deprivation of due process claim, a defendant must show a level of bias that made fair judgment impossible." *Rowsey v. Lee*, 327 F.3d 335, 341 (4th Cir. 2003) (internal quotation marks omitted). "[J]udicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge." *Liteky v. United States*, 510 U.S. 540, 555 (1994). Thus, absent reliance on an impermissible factor such as race or national origin, *United States v. Bakker*, 925 F.2d 728, 740 (4th Cir. 1991), or some personal stake in the litigation, *see* 28 U.S.C. § 455(b)(2)-(5), negative opinions formed throughout criminal proceedings require recusal only when they "display[] deep-seated and unequivocal antagonism that would render fair judgment impossible," *Liteky*, 510 U.S. at 556. Hutchens' claim relies on the assertion that the sentencing judge's familiarity with the facts of the case biased his sentencing decision. We discern no "deep-seated and unequivocal antagonism," *id.*, from the court's statement that

the Government's proposed 15-year sentence insufficiently addressed the goals of sentencing in light of the facts underlying Hutchens' conviction.

In accordance with *Anders*, we have reviewed the record in its entirety and have found no meritorious issues for appeal outside the scope of Hutchens' appeal waiver. Accordingly, we grant the Government's motion to dismiss in part and dismiss the appeal as to all issues within the waiver's scope. We affirm the remainder of the judgment. At this juncture, we deny Hutchens' motion for *Anders* counsel to withdraw. This court requires that counsel inform Hutchens, in writing, of the right to petition the Supreme Court of the United States for further review. If Hutchens 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 Hutchens.

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.

DISMISSED IN PART,
AFFIRMED IN PART