

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4676

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARK ANTHONY SKEETE, a/k/a Mark Skeete, a/k/a Mark Anthony Brown, Jr.,
a/k/a Mark Brown, Jr., a/k/a Clean Up, a/k/a Hakeem,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at
Newport News. David J. Novak, District Judge. (4:19-cr-00062-DJN-DEM-1)

Submitted: June 28, 2022

Decided: June 30, 2022

Before NIEMEYER and HEYTENS, Circuit Judges, and TRAXLER, Senior Circuit
Judge.

Affirmed in part, vacated in part, and remanded by unpublished per curiam opinion.

ON BRIEF: James R. Theuer, JAMES R. THEUER, PLLC, Norfolk, Virginia, for
Appellant. Lisa Rae McKeel, Assistant United States Attorney, OFFICE OF THE
UNITED STATES ATTORNEY, Newport News, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Mark Anthony Skeete pled guilty, pursuant to a written plea agreement, to two counts of use of a firearm resulting in death, in violation of 18 U.S.C. § 924(j), and the district court sentenced Skeete to two consecutive life sentences to be followed by five years' supervised release. Skeete's counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), conceding that there are no meritorious issues for appeal, but asking us to review (1) whether Skeete's guilty plea was knowing and voluntary; and (2) the reasonableness of the imposed sentence. Although notified of his right to do so, Skeete did not file a pro se supplemental brief. The Government moves to dismiss Skeete's appeal in light of the appeal waiver in Skeete's plea agreement. We grant the motion to dismiss in part, dismiss the appeal as to all issues within the scope of the appeal waiver, and affirm Skeete's convictions; however, as explained below, we vacate Skeete's sentence and remand for resentencing.

We review the validity of an appellate waiver de novo to "determine whether [the appellant] knowingly and voluntarily waived his right to appeal." *United States v. McCoy*, 895 F.3d 358, 362 (4th Cir. 2018). An appellate waiver is enforceable "if the record establishes that the waiver is valid and that the issue being appealed is within the scope of the waiver." *United States v. Thornsbury*, 670 F.3d 532, 537 (4th Cir. 2012) (internal quotation marks omitted). Our review of the record confirms that Skeete knowingly and voluntarily waived his right to appeal with limited exceptions. We therefore hold that the waiver is valid and enforceable and grant in part the Government's motion to dismiss.

We also review de novo whether the sentence imposed in the written judgment is consistent with the district court’s oral pronouncement of the sentence. *United States v. Rogers*, 961 F.3d 291, 296 (4th Cir. 2020). While a district court need not orally pronounce all mandatory conditions at the sentencing hearing, “all non-mandatory conditions of supervised release must be announced at a defendant’s sentencing hearing.” *Id.*

In announcing the terms of Skeete’s supervised release at sentencing, the district court announced eight special conditions of supervised release. However, in the written judgment, the district court imposed 10 special conditions of supervised release.* In *United States v. Singletary*, we explained that a challenge to discretionary supervised release terms that were not orally pronounced at sentencing falls outside the scope of a plea waiver because “the heart of a *Rogers* claim is that discretionary conditions appearing for the first time in a written judgment . . . have not been ‘imposed’ on the defendant.” 984 F.3d 341, 345 (4th Cir. 2021). In situations such as the one presented here, where the court fails to announce or otherwise incorporate the discretionary conditions of supervised release, the appropriate remedy is to vacate the sentence and remand for a full resentencing hearing. *See id.* at 346 & n.4. Because we vacate Skeete’s sentence, we do not otherwise consider the reasonableness of the sentence. *See id.* at 346-47 (declining to consider additional challenges to original sentence).

* The special conditions included in the written judgment that were not announced at sentencing were the conditions requiring that Skeete (1) “not incur new credit charges or open additional lines of credit without the [probation officer’s] approval,” and (2) “apply monies received from [various sources] . . . to the outstanding court-ordered financial obligation.” (Sentencing Transcript at 84-85).

In accordance with *Anders*, we have reviewed the entire record and have found no other meritorious grounds for appeal. We therefore grant the Government's motion to dismiss as to all issues within the scope of the appeal waiver and affirm Skeete's convictions, but we deny the Government's motion to dismiss, in part, vacate Skeete's sentence, and remand for resentencing. This court requires that counsel inform Skeete, in writing, of the right to petition the Supreme Court of the United States for further review. If Skeete 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 Skeete. 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,
VACATED IN PART,
AND REMANDED*