

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with
Fed. R. App. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted March 14, 2012

Decided April 12, 2012

Before

DANIEL A. MANION, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

No. 11-3346

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

KEVIN L. BLAKE,
Defendant-Appellant.

Appeal from the United States District
Court for the Eastern District of Wisconsin.

No. 10-CR-197

C.N. Clevert, Jr.,
Chief Judge.

ORDER

Kevin Blake pleaded guilty to conspiring to sell more than five kilograms of crack cocaine between 2007 and 2009. 21 U.S.C. §§ 841(a)(1), 846. The district judge sentenced Blake to 8 years' imprisonment and 5 years' supervised release. Despite having waived his right to appeal in his plea agreement, Blake brought this appeal. Blake's counsel now seeks to withdraw because he believes the appeal would be frivolous. *See Anders v. California*, 386 U.S. 738 (1967). Blake has not filed a response. *See Cir. R. 51(b)*. We confine our review to the potential issues identified in counsel's facially adequate brief. *United States v. Schuh*, 289 F.3d 968, 973–74 (7th Cir. 2002).

Counsel first considers whether Blake could argue that his guilty plea is invalid. But Blake has not contested the validity of the plea, *see United States v. Knox*, 287 F.3d 667, 671–72 (7th Cir. 2002), and an appeal waiver stands or falls with the plea, so the appeal

waiver must stand. See *United States v. Quintero*, 618 F.3d 746, 752 (7th Cir. 2010); *Nunez v. United States*, 546 F.3d 450, 454 (7th Cir. 2008).

Blake's broad appeal waiver does exclude challenges based on "(1) any punishment in excess of the statutory maximum, (2) the sentencing court's reliance on any constitutionally impermissible factor, and (3) ineffective assistance of counsel." But Blake's sentence did not exceed the applicable statutory maximum, see 18 U.S.C. § 3583(b)(1); 21 U.S.C. § 841(b)(1)(A), and counsel has not identified any improper factors that the court relied on in sentencing Blake, see *United States v. Bownes*, 405 F.3d 634, 637 (7th Cir. 2005). Nor has counsel identified any basis to question his representation of Blake in the district court, and in any event a claim of ineffective assistance is more appropriately pursued in a collateral proceeding. *Massaro v. United States*, 538 U.S. 500, 504–05 (2003); *United States v. Persfull*, 660 F.3d 286, 299 (7th Cir. 2011).

We GRANT counsel's motion to withdraw and DISMISS the appeal.