

NONPRECEDENTIAL DISPOSITION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 June 10, 2022

Decided June 16, 2022

Before

DIANE S. SYKES, *Chief Judge*

DIANE P. WOOD, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

No. 21-2742

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

Appeal from the United States District
Court for the Northern District of Indiana,
South Bend Division.

v.

No. 3:20CR19-001

BRADLEY BURNS,
Defendant-Appellant.

Damon R. Leichty,
Judge.

ORDER

Bradley Burns pleaded guilty to conspiring to distribute methamphetamine and heroin, 21 U.S.C. §§ 841(b)(1)(A), 846, and of being a felon in possession of a firearm, 18 U.S.C. § 922(g)(1). The district judge sentenced Burns to 336 months in prison and five years of supervised release. Although his plea agreement contained a broad appeal waiver, Burns filed a notice of appeal. His appointed counsel asserts that any argument on appeal would be frivolous and moves to withdraw. *See Anders v. California*, 386 U.S.

738, 744 (1967). We agree with counsel and therefore grant his motion to withdraw and dismiss the appeal.

Counsel's brief explains the nature of the case and addresses potential issues that an appeal like this would be expected to involve. Because counsel's analysis appears thorough, we limit our review to the subjects that he discusses and that Burns raises in his response under Circuit Rule 51(b). *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

Counsel first considers whether Burns could challenge the validity of his guilty plea and correctly concludes that any such challenge would be frivolous. The transcript of the plea colloquy reflects that the judge complied with Rule 11 of the Federal Rules of Criminal Procedure. The judge determined that Burns understood the charges against him, the trial and appeal rights that he was waiving, the maximum penalties for his offense, and the role of the sentencing guidelines. *See* FED. R. CRIM. P. 11(b)(1). The judge further ensured that Burns's plea was supported by an adequate factual basis and made voluntarily. *See id.* R. 11(b)(2)–(3).

In his Rule 51(b) response, Burns argues that the plea agreement “didn't have enhancement” in it—an apparent reference to a sentencing enhancement he received for being the leader of the conspiracy to distribute drugs. *See* U.S.S.G. § 3B1.1(c). To the extent he argues that the application of this enhancement rendered his plea waiver not knowing or voluntary, this argument is belied by the terms of the plea agreement, which Burns swore he read. The agreement acknowledged his understanding that the court would “determine the applicable sentencing guideline[s] range, and ... all matters, whether factual or legal, relevant to the application of the sentencing guidelines[,] including ... role in the offense adjustments.”

Counsel next considers whether Burns could challenge any aspect of his sentence, including the judge's decision not to grant an acceptance-of-responsibility reduction, but rightly concludes that any challenge would be foreclosed by his appeal waiver. In his plea agreement, Burns expressly waived his right to appeal the “conviction and all components of [his] sentence or the manner in which [his] conviction or [his] sentence was determined or imposed, to any [c]ourt on any ground other than a claim of ineffective assistance of counsel.” An appeal waiver stands or falls with the underlying guilty plea. *United States v. Nulf*, 978 F.3d 504, 506 (7th Cir. 2020). Burns's plea was valid, so his appeal waiver was also valid. And to the extent Burns suggests he was misled to sign the plea agreement “based on what [his] lawyer told

[him],” claims of ineffective assistance generally are best reserved for collateral review, when a fuller record can be developed. *See Massaro v. United States*, 538 U.S. 500, 504–05 (2003).

Counsel’s motion to withdraw is GRANTED and the appeal is DISMISSED.