

NONPRECEDENTIAL DISPOSITION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 February 22, 2023

Decided March 1, 2023

Before

DIANE S. SYKES, *Chief Judge*

DAVID F. HAMILTON, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 22-1832

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ANTONIO R. FERTO-CASTORENA,
Defendant-Appellant.

Appeal from the United States District
Court for the Southern District of Illinois.

No. 4:20-CR-40056-SMY-1

Staci M. Yandle,
Judge.

ORDER

Antonio Ferto-Castorena pleaded guilty to attempted enticement of a minor, 18 U.S.C. § 2422(b), and stipulated to the facts of a charge for production of child pornography, *id.* § 2251(a). In the plea agreement, Ferto-Castorena waived his right to appeal in exchange for the government's promise to recommend the statutory minimum sentence of 120 months in prison. Nevertheless, Ferto-Castorena filed this appeal. His appointed counsel asserts that the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738, 744 (1967). Because counsel's brief

appears thorough and Ferto-Castorena has not responded to the motion, *see* 7TH CIR. R. 51(b), we limit our review to the potential issues that counsel discusses, *see United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

Ferto-Castorena used internet applications to communicate with and expose himself to a 16-year-old girl. Ferto-Castorena arranged to meet the girl, but police arrested him outside of her school. When police searched his cell phone, they discovered messages with another minor girl that included sexually explicit photos Ferto-Castorena had persuaded her to send. In exchange for the government not pursuing a child-pornography charge, Ferto-Castorena entered into a plea agreement and pleaded guilty to the charge of attempted enticement of a minor. At sentencing the parties argued for the statutory minimum sentence of 120 months. The district judge imposed a sentence at the bottom of the Sentencing Guidelines of 168 months (plus 5 years of supervised release).

Counsel confirms that Ferto-Castorena does not want to withdraw his guilty plea, and so counsel rightly does not discuss any argument related to the validity of the plea. *See United States v. Konczak*, 683 F.3d 348, 349 (7th Cir. 2012); *United States v. Knox*, 287 F.3d 667, 670–71 (7th Cir. 2002).

Counsel does consider whether Ferto-Castorena could appeal his sentence and correctly concludes that the appeal waiver would foreclose any challenge. In his plea agreement, Ferto-Castorena “knowingly and voluntarily” waived the right to contest “any aspect of[] the conviction or sentence in any type of proceeding.” The appeal waiver “stands or falls” with the underlying guilty plea. *United States v. Nulf*, 978 F.3d 504, 506 (7th Cir. 2020). Counsel also appropriately rejects any argument that an exception to the appeal waiver could apply. *See United States v. Campbell*, 813 F.3d 1016, 1018 (7th Cir. 2016). As counsel points out, Ferto-Castorena’s sentence does not exceed the statutory maximum of life imprisonment, and nothing in the record suggests that the sentence was based on constitutionally impermissible factors. *Id.*

Therefore, we GRANT counsel’s motion to withdraw and DISMISS the appeal.