

NONPRECEDENTIAL DISPOSITION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 October 16, 2023

Decided October 17, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 22-3103

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

MARTEZ CUNNINGHAM,
Defendant-Appellant.

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

No. 19-CR-20004-001

Michael M. Mihm,
Judge.

ORDER

Police arrested Martez Cunningham after a traffic stop and search that turned up methamphetamine and a pistol. Cunningham later pleaded guilty to unlawful possession of a firearm by a felon, 18 U.S.C. § 922(g)(1), and was sentenced below the guideline range to 112 months in prison and three years of supervised release. Although his plea agreement contains a broad appellate waiver, Cunningham filed a notice of appeal. His appointed counsel asserts that the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738 (1967). Counsel's brief explains the nature of the case and addresses the issues that an appeal of this kind might be

expected to involve. Cunningham did not respond to the motion. *See* CIR. R. 51(b). Because counsel's analysis appears thorough, we limit our review to the subjects that she discusses. *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

Counsel first states that Cunningham does not wish to withdraw his guilty plea, but she does not expressly state that she consulted with Cunningham and "provide[d] advice about the risks and benefits of [this] proposed course of action." *United States v. Konczak*, 683 F.3d 348, 349 (7th Cir. 2012); *see also United States v. Knox*, 287 F.3d 667, 671 (7th Cir. 2002). Counsel also evaluates whether Cunningham's guilty plea was knowing and voluntary. But counsel "should not present (or even explore in an *Anders* submission) a Rule 11 argument unless ... the defendant really wants to withdraw the guilty plea." *Konczak*, 683 F.3d at 349 (internal quotes omitted). Nevertheless, we need not reject the *Anders* submission because we have reviewed the plea colloquy ourselves and conclude that the district court substantially complied with Rule 11 of the Federal Rules of Criminal Procedure. *See id.*

Counsel next considers whether Cunningham could challenge his sentence, but correctly concludes that his appeal waiver precludes such a challenge. An appeal waiver "stands or falls with the underlying agreement and plea." *United States v. Nulf*, 978 F.3d 504, 506 (7th Cir. 2020). In his plea agreement, Cunningham waived "all rights to appeal and/or collaterally attack his conviction and sentence," including the term and conditions of supervised release. Since Cunningham does not seek to withdraw his guilty plea, we would enforce the appellate waiver. *See id.* Additionally, no exception to the waiver could apply: Cunningham's 112-month sentence fell within the statutory maximum of 10 years, and nothing in the record shows that the district court considered any constitutionally impermissible factors at sentencing. *See id.* Moreover, the waiver covers the term and conditions of supervised release, which are also consistent with applicable statutory limits.

Accordingly, we GRANT counsel's motion to withdraw and DISMISS the appeal.