NONPRECEDENTIAL DISPOSITION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 6, 2024
Decided March 6, 2024

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 23-1416

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

NATHANIEL WILKE,
Defendant-Appellant.

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

No. 21-cr-0062-bhl-1

Brett H. Ludwig,
Judge.

O R D E R

Nathaniel Wilke pleaded guilty to possessing marijuana with intent to distribute and possessing a firearm in furtherance of a drug-trafficking offense, and he was sentenced to eight years' imprisonment and five years' supervised release. Wilke appeals, but his appointed lawyer 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 a case of this kind might be expected to involve. We notified Wilke of counsel's motion, and he did not respond. *See* CIR. R.

51(b). Because counsel's brief appears thorough, we limit our review to the subjects that counsel discusses. *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

In December 2019, police officers in Milwaukee, Wisconsin, observed Wilke selling drugs from his home within a residential building. They searched the home pursuant to a warrant and found more than a pound of marijuana, three loaded firearms, and other items related to the drug trade. Wilke was arrested on several state charges, which were dropped when the federal government filed a criminal complaint against him in February 2021. The grand jury later returned a seven-count indictment against him and a codefendant, charging various drug- and firearms-related offenses.

Wilke later entered into a plea agreement under which he would plead guilty to a two-count information. He pleaded guilty to possessing drugs with intent to distribute, 21 U.S.C. §§ 841(a)(1), (b)(1)(c), (b)(1)(D), and possessing a firearm in furtherance of a drug trafficking offense, 18 U.S.C. § 924(c)(1)(A)(i). Under Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, Wilke and the government agreed to a sentence of eight years' imprisonment and a minimum term of supervised release. The agreement also contained a broad waiver of his appellate rights. At the change-of-plea hearing, after a detailed colloquy with Wilke, the district court approved the plea agreement and accepted the guilty plea.

About three months after pleading guilty and a few days before his scheduled sentencing hearing, Wilke filed a pro se motion to withdraw his guilty plea. His appointed counsel then withdrew from representing him. Wilke later appeared at a status hearing with new counsel, who informed the court that Wilke wished to rescind his motion. Wilke agreed, stating: "I want to confirm that I'm accepting the plea, and I want to go forward with sentencing." At a rescheduled sentencing hearing, the court imposed the agreed-upon sentence of eight years' imprisonment and five years' supervised release, and it granted the government's motion to dismiss the indictment as to Wilke. Wilke then appealed.

Appellate counsel reports that Wilke would like to challenge his guilty plea and therefore considers whether there is a nonfrivolous argument that the guilty plea was not knowing and voluntary. *See United States v. Konczak*, 683 F.3d 348, 349 (7th Cir. 2012). Because Wilke rescinded his motion to withdraw his guilty plea, we would at most consider whether there was plain error. *United States v. Austin*, 907 F.3d 995, 998 (7th Cir. 2018). And we agree with counsel that it would be frivolous to argue that plain error occurred here. *See United States v. Davenport*, 719 F.3d 616, 618 (7th Cir. 2013).

As counsel explains, the district court substantially complied with Rule 11 of the Federal Rules of Criminal Procedure. *See id*. During the colloquy, the court explained, and determined that Wilke understood, the nature of the charges, the potential penalties, and the effects of his plea. Wilke agreed with the factual basis presented by the government. And he confirmed that he understood that he was giving up the rights that the judge reviewed with him, which included the right to appeal his conviction or sentence. Wilke verified that he had sufficient time to talk to counsel about his plea and that he was satisfied with the representation he received. He swore that his plea was voluntary, and that he had received no promises about his sentence. These statements under oath are presumed true, *see United States v. Barr*, 960 F.3d 906, 917 (7th Cir. 2020), and it would be frivolous to argue that accepting the plea was plain error.

Next, counsel correctly concludes that a challenge to Wilke's sentence, or any other appellate argument not specifically exempt from the appeal waiver, would be frivolous. An appeal waiver "stands or falls" with the underlying guilty plea, *United States v. Nulf*, 978 F.3d 504, 506 (7th Cir. 2020), and, as noted above, Wilke's plea is not subject to a colorable challenge on appeal. And no exception to the enforceability of the waiver could apply: The sentence did not exceed the statutory minimum, and the judge did not rely on any constitutionally impermissible factors in determining Wilke's sentence. *See id.* at 507. Wilke's broad waiver is therefore enforceable, and it covers any challenge to his sentence.

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