

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 09-3435

United States of America,

Appellee,

v.

Brian Todd Tracy,

Appellant.

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

[UNPUBLISHED]

Submitted: May 6, 2010
Filed: May 11, 2010

Before WOLLMAN, COLLOTON, and GRUENDER, Circuit Judges.

PER CURIAM.

Brian Tracy was charged with possessing child pornography, in violation of 18 U.S.C. § 2252(a)(4)(B) and (b)(2). Tracy pleaded guilty in accord with a written plea agreement, which contained an appeal waiver. The district court¹ sentenced Tracy to 84 months in prison, below the advisory Guidelines range. On appeal, counsel has moved to withdraw and filed a brief under Anders v. California, 386 U.S. 738 (1967), challenging the reasonableness of the sentence and the adequacy of the plea-hearing colloquy.

¹The Honorable John A. Jarvey, United States District Judge for the Southern District of Iowa.

We will enforce the appeal waiver in this case because Tracy's appeal falls within the scope of the waiver, the record shows the requisite knowledge and voluntariness, and enforcing the appeal waiver would not constitute a miscarriage of justice. See United States v. Andis, 333 F.3d 886, 889-92 (8th Cir. 2003) (en banc) (court should enforce appeal waiver and dismiss appeal where appeal falls within scope of waiver, both plea agreement and waiver were entered into knowingly and voluntarily, and no miscarriage of justice would result); see also United States v. Estrada-Bahena, 201 F.3d 1070, 1071 (8th Cir. 2000) (per curiam) (enforcing appeal waiver in Anders case).

Having independently reviewed the record under Penson v. Ohio, 488 U.S. 75, 80 (1988), we have found no nonfrivolous issue not covered by the waiver. Accordingly, we grant counsel leave to withdraw, and we dismiss this appeal.
