

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 10-1112

United States of America,

Appellee,

v.

Timothy Jermaine Gunn,

Appellant.

*
*
*
*
*
*
*
*
*

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

[UNPUBLISHED]

Submitted: July 20, 2010
Filed: July 28, 2010

Before WOLLMAN, MELLOY, and GRUENDER, Circuit Judges.

PER CURIAM.

In this direct criminal appeal, Timothy Gunn challenges the sentence the district court¹ imposed following his guilty plea to knowingly and intentionally conspiring to distribute at least 50 grams of a mixture containing cocaine base, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), and 846. On appeal, counsel has moved to withdraw and has filed a brief under Anders v. California, 386 U.S. 738 (1967). Gunn has filed a pro se supplemental brief, arguing that the court should have held a hearing to

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

evaluate his competency, that trial counsel was ineffective, and that the district court improperly denied his motion to withdraw his plea.

We conclude that the issues raised in the direct appeal fall within the scope of the appeal waiver that Gunn entered into knowingly and voluntarily and that enforcement of the waiver would not result in a miscarriage of justice. See United States v. Andis, 333 F.3d 886, 890-92 (8th Cir. 2003) (en banc).²

Finally, having reviewed the record independently pursuant to Penson v. Ohio, 488 U.S. 75 (1988), we find no nonfrivolous issues that are not covered by the appeal waiver. Accordingly, we grant counsel leave to withdraw, and we dismiss the appeal.

²The issues raised by Gunn's pro se supplemental brief are more properly the subject of a proceeding brought pursuant to 28 U.S.C. § 2255, and thus we do not address them at this time.