

United States Court of Appeals
For the Eighth Circuit

No. 14-3597

United States of America

Plaintiff - Appellee

v.

James Swift, also known as James Equanice Swift

Defendant - Appellant

Appeal from United States District Court
for the District of North Dakota - Fargo

Submitted: April 2, 2015

Filed: April 16, 2015

[Unpublished]

Before BYE, COLLOTON, and SHEPHERD, Circuit Judges.

PER CURIAM.

James Swift directly appeals the sentence the district court¹ imposed after he pled guilty to a drug-related charge. His counsel has moved to withdraw, and has

¹The Honorable Ralph R. Erickson, Chief Judge, United States District Court for the District of North Dakota.

filed a brief citing Anders v. California, 386 U.S. 738 (1967), and acknowledging an appeal waiver in Swift's plea agreement.

Upon careful de novo review, we conclude that the appeal waiver is enforceable. See United States v. Andis, 333 F.3d 886, 889-90 (8th Cir. 2003) (en banc) (appeal waiver will be enforced where appeal falls within scope of waiver, plea agreement and waiver were entered into knowingly and voluntarily, and no miscarriage of justice would result); see also United States v. Scott, 627 F.3d 702, 704 (8th Cir. 2010) (de novo review of validity and applicability of appeal waiver). In addition, having reviewed the record independently under Penon v. Ohio, 488 U.S. 75 (1988), we find no non-frivolous issues outside the scope of the appeal waiver. Accordingly, we dismiss this appeal based upon the appeal waiver.

As for counsel's motion to withdraw, we conclude that allowing counsel to withdraw at this time would not be consistent with the Eighth Circuit's 1994 Amendment to Part V of the Plan to Implement The Criminal Justice Act of 1964. We therefore deny counsel's motion to withdraw as premature, without prejudice to counsel refile the motion upon fulfilling the duties set forth in the Amendment.

Judge Colloton would grant counsel's motion to withdraw. See United States v. Eredia, 578 Fed. Appx. 620, 621 (8th Cir. 2014) (unpublished per curiam) (Colloton, J., concurring in part and dissenting in part.)
