

United States Court of Appeals  
For the Eighth Circuit

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No. 17-1691

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United States of America

*Plaintiff - Appellee*

v.

Gene Lemay Barris

*Defendant - Appellant*

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Appeal from United States District Court  
for the Eastern District of Missouri - Cape Girardeau

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Submitted: March 13, 2018

Filed: March 21, 2018

[Unpublished]

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Before GRUENDER, BOWMAN, and ERICKSON, Circuit Judges.

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PER CURIAM.

Gene Barris pleaded guilty to drug and firearm charges pursuant to a plea agreement that contained an appeal waiver. He was subsequently granted relief under 28 U.S.C. § 2255 and resentenced. He now directly appeals the new sentence

imposed by the district court.<sup>1</sup> His counsel has moved to withdraw and has filed a brief under *Anders v. California*, 386 U.S. 738 (1967), arguing that the court committed substantive and procedural sentencing errors. Barris has filed a supplemental brief asserting ineffective assistance of counsel claims.

We decline to consider Barris's ineffective-assistance claims. *See United States v. Hernandez*, 281 F.3d 746, 749 (8th Cir. 2002) (noting that, in general, an ineffective-assistance claim is not cognizable on direct appeal and that such a claim is properly raised in a § 2255 action). As to the remaining issues, we enforce the appeal waiver. *See United States v. Scott*, 627 F.3d 702, 704 (8th Cir. 2010) (stating that this court reviews *de novo* the validity and applicability of an appeal waiver); *United States v. Andis*, 333 F.3d 886, 889-92 (8th Cir. 2003) (en banc) (stating that an appeal waiver will be enforced if the appeal falls within the scope of the waiver, defendant knowingly and voluntarily entered into the plea agreement and the waiver, and enforcing the waiver would not result in a miscarriage of justice).

Having independently reviewed the record pursuant to *Penson v. Ohio*, 488 U.S. 75 (1988), we find no nonfrivolous issues outside the scope of the appeal waiver. Accordingly, we dismiss this appeal, and we grant counsel leave to withdraw.

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<sup>1</sup>The Honorable John A. Ross, United States District Judge for the Eastern District of Missouri.