

United States Court of Appeals
For the Eighth Circuit

No. 18-2193

United States of America

Plaintiff - Appellee

v.

Ellis Scott Tooles

Defendant - Appellant

Appeal from United States District Court
for the District of Minnesota - St. Paul

Submitted: January 23, 2019

Filed: February 5, 2019

[Unpublished]

Before COLLOTON, SHEPHERD, and KOBES, Circuit Judges.

PER CURIAM.

Ellis Tooles directly appeals his sentence after he pleaded guilty to a child pornography offense under a plea agreement containing an appeal waiver. The district court¹ imposed a 300-month prison term. Tooles's counsel has moved to withdraw

¹The Honorable Susan Richard Nelson, United States District Judge for the District of Minnesota.

and has filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing that the district court abused its discretion in not imposing a lower sentence. On appeal, Tooles has moved for appointment of new counsel.

We conclude that the appeal waiver is enforceable and applicable to the issues raised by Tooles. See United States v. Scott, 627 F.3d 702, 704 (8th Cir. 2010) (the validity and applicability of an appeal waiver is reviewed de novo); United States v. Andis, 333 F.3d 886, 889-92 (8th Cir. 2003) (en banc) (an appeal waiver will be enforced if the appeal falls within the scope of the waiver, the defendant knowingly and voluntarily entered into the plea agreement and the waiver, and enforcing the waiver would not result in a miscarriage of justice). We have also independently reviewed the record under Penson v. Ohio, 488 U.S. 75 (1988), and we conclude that there are no non-frivolous issues for appeal outside the scope of the appeal waiver. Accordingly, we dismiss this appeal, grant counsel's motion to withdraw, and deny as moot Tooles's motion for appointment of new counsel.
