

United States Court of Appeals
For the Eighth Circuit

No. 18-2340

United States of America

Plaintiff - Appellee

v.

Ryan Lee Balster

Defendant - Appellant

Appeal from United States District Court
for the District of South Dakota - Rapid City

Submitted: February 13, 2019

Filed: February 25, 2019

[Unpublished]

Before BENTON, WOLLMAN, and KELLY, Circuit Judges.

PER CURIAM.

Ryan Lee Balster directly appeals the within-Guidelines sentence the district court¹ imposed after he pled guilty, pursuant to a plea agreement, to attempting to

¹The Honorable Jeffrey L. Viken, Chief Judge, United States District Court for the District of South Dakota.

entice a minor. Having jurisdiction under 28 U.S.C. § 1291, this court dismisses the appeal based on the appeal waiver.

Counsel has moved for leave to withdraw and has filed a brief under *Anders v. California*, 386 U.S. 738 (1967), asserting that the court should not enforce the appeal waiver because Balster's sentence was substantively unreasonable. This court concludes that the appeal waiver is enforceable, as the record demonstrates that Balster entered into the plea agreement and the appeal waiver knowingly and voluntarily. *See Nguyen v. United States*, 114 F.3d 699, 703 (8th Cir. 1997) (defendant's representations during plea-taking carry strong presumption of verity). Counsel's arguments fall within the scope of the waiver. *See United States v. Scott*, 627 F.3d 702, 704 (8th Cir. 2010) (de novo review); *United States v. Andis*, 333 F.3d 886, 890-92 (8th Cir. 2003) (en banc) (discussing enforcement of appeal waivers). To the extent counsel asks this court to reconsider the miscarriage-of-justice exception to enforcing appeal waivers, or to make a special exception in this case, the court finds no basis to do so. *See Andis*, 333 F.3d at 892 (miscarriage-of-justice exception).

This court has reviewed the record independently under *Penson v. Ohio*, 488 U.S. 75 (1988), and has found no non-frivolous issues.

The appeal is dismissed, and counsel's request to withdraw is granted.
