

United States Court of Appeals
For the Eighth Circuit

No. 18-3481

United States of America

Plaintiff Appellee

v.

Jose Farias-Valdovinos

Defendant Appellant

Appeal from United States District Court
for the Western District of Missouri - Kansas City

Submitted: March 3, 2020
Filed: May 18, 2020
[Unpublished]

Before SHEPHERD, KELLY, and ERICKSON, Circuit Judges.

PER CURIAM.

Jose Farias-Valdovinos appeals from his sentence after pleading guilty, pursuant to a plea agreement containing an appeal waiver, to aiding and abetting the possession with intent to distribute a mixture or substance containing a detectable amount of methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C), and

846 and 18 U.S.C. § 2. After varying downward, the district court¹ sentenced him 120 months imprisonment. Having jurisdiction under 28 U.S.C. § 1291, we affirm and dismiss in part the appeal.

On appeal, Farias-Valdovinos's counsel filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), arguing that Farias-Valdovinos's sentence was substantively unreasonable and that the appeal waiver in his plea agreement should not be enforced. After independently reviewing the record under Penson v. Ohio, 488 U.S. 75 (1988), we ordered supplemental briefing on whether sufficient evidence supported Farias-Valdovinos's guilty plea and whether that claim survives his appeal waiver. After considering the parties' supplemental filings, we conclude that Farias-Valdovinos's argument that his sentence is substantively unreasonable is barred by the appeal waiver and must be dismissed. However, we find that the appeal waiver does not prevent us from considering his argument that his guilty plea was not knowing or voluntary because there was an insufficient factual basis underlying the plea. See United States v. Haubrich, 744 F.3d 554, 558 (8th Cir. 2014).

Because Farias-Valdovinos failed to challenge the factual basis underlying the plea before the district court, we review this issue for plain error. See United States v. Froom, 616 F.3d 773, 776 (8th Cir. 2010). Following careful review of the record, we conclude that the district court did not plainly err in finding that there was a sufficient factual basis for the plea and in accepting Farias-Valdovinos's guilty plea. Accordingly, we affirm the judgment of the district court and dismiss in part the appeal.

¹The Honorable Gary A. Fenner, United States District Judge for the Western District of Missouri.