

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals**For the Seventh Circuit****Chicago, Illinois 60604**

Submitted January 16, 2024

Decided January 19, 2024

BeforeDIANE S. SYKES, *Chief Judge*MICHAEL B. BRENNAN, *Circuit Judge*DORIS L. PRYOR, *Circuit Judge*

No. 23-2376

UNITED STATES OF AMERICA,
*Plaintiff-Appellee,**v.*ARMON R. SIMPSON,
*Defendant-Appellant.*Appeal from the United States District
Court for the Southern District of
Illinois.

No. 3:21-CR-30133-DWD-2

David W. Dugan,
*Judge.***ORDER**

Armon Simpson pleaded guilty to conspiracy to commit carjacking, carjacking, and use of a firearm during a crime of violence. The district judge sentenced him to 208 months' imprisonment and 3 years' supervised release. Despite the broad appeal waiver in his plea agreement, Simpson filed a notice of appeal. His appointed counsel contends that the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738, 744 (1967). Counsel's brief explains the nature of the case and addresses issues that an appeal of this kind might be expected to involve. Simpson did not

respond to counsel's motion. *See* CIR. R. 51(b). Because counsel's analysis appears thorough, we limit our review to the subjects that he discusses. *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014). We grant the motion and dismiss the appeal.

Simpson used a firearm to steal motor vehicles three times in July and August 2021. A grand jury indicted him on three counts: conspiracy to commit carjacking, 18 U.S.C. § 371, carjacking, *id.* § 2119, and use of a firearm during a crime of violence, *id.* § 924(c). The latter two charges pertained to the same carjacking on August 5, 2021. Simpson eventually entered a plea deal in which he agreed to plead guilty to all three counts. In the written agreement, Simpson admitted that he conspired with others to commit numerous carjackings in Illinois and Missouri. As part of the plea agreement, the government agreed to forgo additional carjacking and firearms charges based on the theft that occurred in July 2021.

The plea agreement also contained a broad appeal waiver. Simpson waived "the right to seek modification of, or contest any aspect of, the conviction or sentence in any type of proceeding, including the manner in which the sentence was determined or imposed." The waiver expressly included challenges to "the constitutionality of the statute(s) to which Defendant is pleading guilty or under which Defendant is sentenced" and arguments that "the conduct to which Defendant has admitted does not fall within the scope of such statute(s)." The plea agreement contained a narrow exception: if the judge imposed more than 30 years' imprisonment, then Simpson is permitted to challenge the substantive reasonableness of the prison sentence.

At the change-of-plea hearing, the judge conducted the plea colloquy, and found that a sufficient factual basis existed for each offense. After Simpson confirmed under oath that he understood the charge, the penalties, and the rights he was waiving, and affirmed that his plea was voluntary, not the product of coercion or given in exchange for a promise, the judge accepted Simpson's guilty pleas on each of the three counts.

Before sentencing, the probation office circulated a presentence investigation report (PSR). Based on a total offense level of 29 and a criminal history category of I, the PSR set the imprisonment range under the Sentencing Guidelines at 87 months to 108 months, but because the § 924(c) conviction carries a mandatory consecutive sentence of 84 months, the effective guidelines range was 171 to 192 months. Neither side objected to these calculations. In his sentencing memorandum, Simpson requested a sentence of 171 months, whereas the government requested a sentence of 360 months (30 years) based on violent related conduct.

At the sentencing hearing, the district judge heard the parties' arguments for their requested sentences. After discussing the sentencing factors under 18 U.S.C. § 3553(a), the judge imposed concurrent 60- and 100-month prison terms on the conspiracy and carjacking counts and a consecutive 108-month prison term for the § 924(c) count, for a total sentence of 208 months. The judge also imposed concurrent, 3-year terms of supervised release on each count.

In reviewing potential issues for appeal, counsel contemplates challenging the appeal waiver. An appeal waiver stands or falls with the plea agreement of which it is part. *United States v. Nulf*, 978 F.3d 504, 506 (7th Cir. 2020). Therefore, if Simpson knowingly and voluntarily pleaded guilty, the waiver will stand.

The record shows, and counsel correctly concludes, that any challenge to the guilty plea would be frivolous. Simpson did not move to withdraw his plea in the district court, so our review would be for plain error. *See United States v. Davenport*, 719 F.3d 616, 618 (7th Cir. 2013). And a review of the transcript of the change-of-plea hearing reflects that the judge substantially complied with Rule 11(b) of the Federal Rules of Criminal Procedure and ensured that the guilty plea was knowing and voluntary.

The judge explained the nature of the charges, informed Simpson of the potential penalties, and determined the factual basis for his plea before accepting it. The judge deviated from Rule 11 in two ways. First, he did not advise Simpson that his sworn statements could be used against him in a prosecution for perjury if untrue. *See Fed. R. Crim. P. 11(b)(1)(A)*. The judge also did not discuss the court's authority to order restitution. *See Fed. R. Crim. P. 11(b)(1)(K)*. But these omissions were harmless because Simpson confirmed under oath that he understood and accepted the written plea agreement, which contained the omitted information. *See United States v. Adams*, 746 F.3d 734, 746–47 (7th Cir. 2014). Further, the judge ordered no restitution, and there is no perjury prosecution. Therefore, any plain-error challenge to the validity of the guilty plea would be pointless. *See United States v. Collins*, 796 F.3d 829, 835 (7th Cir. 2015).

As counsel says, because Simpson knowingly and voluntarily waived his appellate rights in express and unambiguous terms, we will enforce the waiver unless some exception applies. *Nulf*, 978 F.3d at 506. None does. The sentences on each count are below the applicable statutory maximums, and there is no evidence that the judge relied on unconstitutional considerations, such as race, in sentencing Simpson. *United States v. Adkins*, 743 F.3d 176, 192 (7th Cir. 2014). With no applicable exception to

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enforceability, Simpson's waiver of his right to appeal on any ground if the judge sentenced him to less than 30 years (or 360 months) in prison renders frivolous any challenge to the sentence.

Therefore, we GRANT counsel's motion to withdraw and DISMISS the appeal.