

NONPRECEDENTIAL DISPOSITION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 February 24, 2025

Decided February 25, 2025

BeforeMICHAEL B. BRENNAN, *Circuit Judge*AMY J. ST. EVE, *Circuit Judge*DORIS L. PRYOR, *Circuit Judge*

No. 24-1848

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

No. 4:22-CR-40052-SMY-1

Staci M. Yandle,
*Judge.***ORDER**

Theresa Kelly pleaded guilty to a six-count indictment charging her with making false statements to her federal employer, obstructing justice in a federal civil case, and defrauding Medicare. *See* 18 U.S.C. §§ 1001, 1503, 1347. She was sentenced to 10 months' imprisonment. Despite a broad appeal waiver in her plea agreement, Kelly filed a notice of appeal. Her appointed counsel asserts that the appeal is frivolous and seeks to withdraw under *Anders v. California*, 386 U.S. 738, 744 (1967). Counsel's brief explains the nature of the case and addresses potential issues that an appeal of this kind would typically involve. Because counsel's analysis appears thorough and Kelly did not respond to the motion, *see* CIR. R. 51(b), we limit our review to the subjects identified in

the brief. *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014). We grant the motion and dismiss the appeal.

Kelly, a psychologist employed by the Veterans Administration, engaged in fraudulent conduct for over four and a half years. Between May 2016 and January 2018, she submitted false claims to Medicare, ultimately defrauding the agency of \$35,795.94. Between November 2016 and August 2020, she submitted false medical records to the Administration for the purpose of obtaining medical leave. And in December 2020, during a civil lawsuit in federal court, she provided her attorney with false medical information that became the basis for a continuance granted by the court.

Kelly was charged with six counts. Four arose from false records she submitted to the Administration: one for concealing the fact that she lacked legitimate medical documents, and three for making false writings, 18 U.S.C. § 1001(a)(1), (3). A fifth was for obstruction of justice, 18 U.S.C. § 1503, in connection with the false statement made to obtain a continuance. And a sixth was for health care fraud, 18 U.S.C. § 1347, arising from the false claims sent to Medicare.

Kelly pleaded guilty to all counts. The written agreement contained a broad appellate waiver in which Kelly agreed to waive her right to file a direct appeal challenging her conviction and sentence.

The probation office prepared a presentence investigation report (PSR) that assessed Kelly's guidelines range at 10 to 16 months (based on a total offense level of 12 and a criminal history category of I). These recommendations were adopted by the district court, which sentenced Kelly to 10 months' imprisonment and 3 years' supervised release. The court also required her to pay \$35,795.94 in restitution.

In his brief, counsel first states that he advised Kelly about the risks and benefits of challenging the guilty plea and determined that she does not seek to withdraw her plea. *See United States v. Knox*, 287 F.3d 667, 671 (7th Cir. 2002). Counsel therefore properly omits discussion of whether the plea was knowing and voluntary. *See United States v. Larry*, 104 F.4th 1020, 1022 (7th Cir. 2024).

Counsel considers whether Kelly could challenge her sentence and rightly concludes that the appellate waiver would foreclose any challenge. An appellate waiver stands or falls with the underlying plea agreement, *United States v. Nulf*, 978 F.3d 504, 506 (7th Cir. 2020), and Kelly waived her right to "contest any aspect of[] the conviction or sentence in any type of proceeding." One exception to the waiver allowed Kelly to

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challenge the substantive reasonableness of her sentence if it was in excess of the guidelines range, but here her 10-month prison term was within the guidelines calculation adopted by the court.* Moreover, the sentencing transcript reflects that the court did not consider any constitutionally impermissible factors at sentencing. *See United States v. Campbell*, 813 F.3d 1016, 1018 (7th Cir. 2016). Kelly’s restitution was required by 18 U.S.C. § 3663A, and her \$600 special assessment was required by 18 U.S.C. § 3013(a)(2)(A).

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

* We note that the PSR included a harmless typographical error. In its discussion of specific offense characteristics, it stated that a “four-level increase is applicable” for an intended loss in the offense of \$54,275. (PSR ¶ 55.) That is incorrect; the Guidelines direct that a sum greater than \$40,000 and less than \$95,000 warrants a six-level increase. *See* U.S.S.G. § 2B1.1(b)(1). The error is harmless, however, because the PSR’s offense-level computations applied the proper six-level increase.