

NONPRECEDENTIAL DISPOSITION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 September 29, 2025

Decided October 1, 2025

BeforeMICHAEL Y. SCUDDER, *Circuit Judge*AMY J. ST. EVE, *Circuit Judge*NANCY L. MALDONADO, *Circuit Judge*

No. 24-3029

UNITED STATES OF AMERICA,
*Plaintiff-Appellee,**v.*JAMES D. MCCREARY,
*Defendant-Appellant.*Appeal from the United States District
Court for the Northern District of
Indiana, Fort Wayne Division.

No. 1:21CR43-001

Holly A. Brady,
*Chief Judge.***ORDER**

James McCreary pleaded guilty to possession of drugs and being a felon in possession of a firearm. Despite a broad appellate waiver in his plea agreement, McCreary filed a notice of appeal. His appointed attorney asserts 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 the potential issues that an appeal of this kind might involve. Because counsel's analysis appears thorough, we limit our review to the subjects that counsel discusses, in addition to the arguments that McCreary proposes in his response under Circuit Rule 51(b). *See United States v. Bey*,

748 F.3d 774, 776 (7th Cir. 2014). We conclude that McCreary has no arguable issues on appeal and thus grant the motion and dismiss the appeal.

Following a joint state and federal investigation into suspected drug suppliers, McCreary was charged with possessing cocaine with intent to distribute, *see* 21 U.S.C. § 841(a)(1), possessing a firearm in furtherance of a drug trafficking crime, *see* 18 U.S.C. § 924(c)(1)(A), and being a felon in possession of a firearm, *see* 18 U.S.C. § 922(g)(1). In accordance with a plea agreement, McCreary entered a guilty plea to the drug possession and felon-in-possession charges, and the government moved to dismiss the charge for possessing a firearm in furtherance of a drug trafficking crime.

At McCreary's change-of-plea hearing, he confirmed that he understood the plea agreement and that the agreement was not the result of coercion or other promises. *See* FED. R. CRIM. P. 11(b)(1)(C)–(N). Additionally, the magistrate judge asked whether McCreary understood the appellate waiver in the plea agreement, and McCreary responded that he did. McCreary also confirmed under oath that he understood the charges and applicable penalties, his trial rights, and the role of the Sentencing Guidelines. After hearing the factual basis for the plea and finding it sufficient, the magistrate judge determined that the plea should be accepted. The district judge later accepted the magistrate judge's recommendation to accept McCreary's guilty plea.

The United States Probation Office prepared a presentence investigation report (PSR) that, after a three-level reduction for acceptance of responsibility, calculated a total adjusted offense level of 34 and a criminal history category of VI, yielding a guidelines range of 262 to 327 months' imprisonment. *See* U.S.S.G. Ch. 5, Pt. A. The PSR also concluded that McCreary was a career offender under U.S.S.G. § 4B1.1(a) because he had two prior felony convictions in Indiana for crimes of violence—robbery causing bodily injury and battery resulting in bodily injury.

McCreary objected to the PSR's determination that he qualified as a career offender. Relying on *Flores v. Ashcroft*, 350 F.3d 666, 669–70 (7th Cir. 2003), he argued that his prior conviction for battery resulting in bodily injury was not a crime of violence because Indiana law does not require proof of violent physical force to convict for battery resulting in bodily injury. *See* IND. CODE 35-42-2-1(d)(1). The court overruled his objection because, as McCreary conceded, this court clarified in *United States v. Love*, 7 F.4th 674, 680–81 (7th Cir. 2021), that any touching that resulted in bodily injury was capable of causing bodily injury and thus constituted a crime of violence.

At the sentencing hearing, the court overruled McCreary's objections and adopted the PSR's guidelines calculations. McCreary again objected to the career offender designation, arguing that the predicate felony battery charge would have been a misdemeanor if it had not been enhanced based on a prior conviction. The government argued that McCreary's predicate felony battery charge still required proof of bodily injury when it was enhanced from a misdemeanor to a felony. The court overruled McCreary's objection, relying on the rationale in its previous order. McCreary had no objections to the proposed supervised release conditions and waived oral pronouncement. The court then granted the government's motion to dismiss the charge for possession of a firearm in furtherance of a drug trafficking crime.

Next, McCreary's children and mother addressed the court, discussing their relationship with him and how he had changed for the better. The government then argued for a 327-month sentence because of McCreary's history of criminal offenses, the number of chances he was given by the state of Indiana to stop his criminal activity, and the seriousness of armed drug trafficking. McCreary's counsel argued for a lower sentence because of McCreary's family support, the positive changes he had made while incarcerated, and how the Guidelines did not control criminal sentences. In his allocution, McCreary promised to do better, emphasized the family support he would have upon release, expressed how he wanted to be there for his family, described how he had lost his five-year-old son while incarcerated, argued that many of his prior convictions were related to a "toxic relationship," and asked for mercy.

The district court acknowledged McCreary's family support and then considered his extensive, serious, and violent convictions. The court sentenced McCreary to 262 months' imprisonment for the drug conviction and a concurrent 120 months for the firearm conviction. The court stated that it would have imposed the same sentence even if McCreary was not a career offender. The court also imposed an eight-year term of supervised release for the drug conviction to run concurrently with a three-year term of supervised release for the firearm conviction.

To begin, counsel informs us that McCreary does not wish to challenge his guilty plea, so counsel properly refrains from discussing the voluntariness of the plea. *See United States v. Konczak*, 683 F.3d 348, 349 (7th Cir. 2012); *United States v. Knox*, 287 F.3d 667, 671 (7th Cir. 2002).

Counsel correctly discerns that any challenge to McCreary's sentence would be fruitless because his plea agreement waived his right to contest "all components of [his]

sentence” and “the manner in which ... [his] sentence was determined or imposed” other than a claim of ineffective assistance of counsel. When we conclude that a defendant entered into a plea agreement knowingly and voluntarily, we enforce an appellate waiver contained in that agreement—unless the sentence exceeds the statutory maximum or the record suggests that the court relied on a constitutionally impermissible factor such as race. *See United States v. Nulf*, 978 F.3d 504, 506 (7th Cir. 2020). Because, as counsel rightly concludes, nothing in the record suggests either exception applies, McCreary’s appellate waiver precludes any challenge to his sentence other than ineffective assistance of counsel.

McCreary proposes arguing that his counsel was ineffective during plea negotiations because his counsel ignored documents demonstrating that one of McCreary’s predicate felony offenses was eligible for conversion to a misdemeanor under IND. CODE § 35-38-1-1.5. McCreary has appended documents to his Circuit Rule 51(b) response that suggest it now has been converted. He suggests that in light of this conversion, he now lacks the predicate felony convictions to be considered a career offender. *See* § 4B1.1(a). But claims of ineffective assistance of counsel—which are exempt from McCreary’s appellate waiver—should be reserved for collateral review. *See United States v. Cates*, 950 F.3d 453, 457 (7th Cir. 2020). Regardless, any error in the PSR’s career offender designation would be harmless because the court stated that even if McCreary was not a career offender it would have imposed the same sentence based on its evaluation of the factors in § 3553(a). *See United States v. Carter*, 961 F.3d 953, 959–60 (7th Cir. 2020).

We GRANT counsel’s motion to withdraw and DISMISS the appeal.