

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 08-1244

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United States of America,

Appellee,

v.

Kirk Allen Newby,

Appellant.

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\* Appeal from the United States  
\* District Court for the  
\* Eastern District of Missouri.

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\* [UNPUBLISHED]

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Submitted: May 8, 2009  
Filed: May 13, 2009

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Before WOLLMAN, MURPHY, and MELLOY, Circuit Judges.

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PER CURIAM.

Kirk Newby appeals the 180-month sentence the district court<sup>1</sup> imposed after he pleaded guilty to drug and firearm charges. On appeal, his counsel has filed a brief under Anders v. California, 386 U.S. 738 (1967), in which she requests leave to withdraw.

Upon careful review, we conclude that this appeal falls within the scope of a valid appeal waiver that was contained in Newby's written plea agreement, that he

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<sup>1</sup>The Honorable Rodney W. Sippel, United States District Judge for the Eastern District of Missouri.

knowingly and voluntarily entered into the plea agreement and the appeal waiver, and that enforcing the appeal waiver would not result in a miscarriage of justice. See United States v. Andis, 333 F.3d 886, 889-92 (8th Cir. 2003) (en banc) (discussing enforceability of appeal waiver); see also United States v. Estrada-Bahena, 201 F.3d 1070, 1071 (8th Cir. 2000) (per curiam) (enforcing appeal waiver in Anders case).

Having reviewed the record independently under Penson v. Ohio, 488 U.S. 75, 80 (1988), we find no nonfrivolous issue for appeal beyond the scope of the appeal waiver. Accordingly, we dismiss the appeal. We also grant defense counsel's motion to withdraw on condition that counsel inform appellant about the procedures for filing petitions for rehearing and for certiorari.

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