

United States Court of Appeals
For the Eighth Circuit

No. 18-3498

United States of America

Plaintiff - Appellee

v.

James Marione Butchee, also known as Knowledge

Defendant - Appellant

Appeal from United States District Court
for the District of North Dakota - Fargo

Submitted: August 14, 2019

Filed: August 22, 2019

[Unpublished]

Before BENTON, SHEPHERD, and KELLY, Circuit Judges.

PER CURIAM.

James Butchee appeals after he signed a Federal Rule of Criminal Procedure 11(c)(1)(C) plea agreement containing an appeal waiver, entered a guilty plea, and

was sentenced by the district court¹ in accordance with the plea agreement. In a brief filed under Anders v. California, 386 U.S. 738 (1967), his counsel acknowledges the appeal waiver, and presents Butchee's view that his base offense level was miscalculated. Counsel has also moved for leave to withdraw. In a pro se brief, Butchee argues that he was erroneously classified as a career offender, and that counsel was ineffective.

We decline, on direct appeal, to consider any claims of ineffective assistance of counsel. See United States v. Hernandez, 281 F.3d 746, 749 (8th Cir. 2002) (in general, ineffective-assistance claim is not cognizable on direct appeal; such claim is properly raised in 28 U.S.C. § 2255 action). As to the remaining issues, we enforce the appeal waiver. See United States v. Scott, 627 F.3d 702, 704 (8th Cir. 2010) (de novo review of validity and applicability of appeal waiver); United States v. Andis, 333 F.3d 886, 889-92 (8th Cir. 2003) (en banc) (appeal waiver will be enforced if appeal falls within scope of waiver, defendant knowingly and voluntarily entered into plea agreement and waiver, and enforcing waiver would not result in miscarriage of justice).

Having reviewed the record pursuant to Penon v. Ohio, 488 U.S. 75 (1988), we find no non-frivolous issues for appeal outside the scope of the appeal waiver. Accordingly, we dismiss this appeal, and we grant counsel leave to withdraw.

¹The Honorable Daniel L. Hovland, Chief Judge, United States District Court for the District of North Dakota.