

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

March 28, 2019

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FRANK STEVEN WIETECHKA, JR.,

Defendant - Appellant.

No. 18-1384
(D.C. No. 1:18-CR-00074-PAB-1)
(D. Colo.)

ORDER AND JUDGMENT*

Before **MORITZ, KELLY**, and **EID**, Circuit Judges.

This matter is before the court on the government’s motion to enforce the appeal waiver contained in Frank Steven Wietecha, Jr.’s plea agreement. We grant defense counsel’s motion to withdraw, grant the government’s motion to enforce Wietecha’s appeal waiver, and dismiss the appeal.

Wietecha pleaded guilty to possession of child pornography in violation of 18 U.S.C. § 2252A(a)(5)(B) and (b)(2). The statutory maximum penalty for this offense is twenty years’ imprisonment. *See* 18 U.S.C. § 2252A(b)(2). After finding that the applicable advisory guidelines sentencing range was 130 to 162 months’

* This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

imprisonment the district court sentenced Wietecha at the bottom of the range to 130 months.

Despite the broad appeal waiver in his plea agreement, Wietecha filed a notice of appeal. The government filed a motion to enforce the appeal waiver under *United States v. Hahn*, 359 F.3d 1315, 1328 (10th Cir. 2004) (en banc) (per curiam). In evaluating a motion to enforce, we consider: “(1) whether the disputed appeal falls within the scope of the waiver of appellate rights; (2) whether the defendant knowingly and voluntarily waived his appellate rights; and (3) whether enforcing the waiver would result in a miscarriage of justice.” *Id.* at 1325.

Wietecha’s counsel responded to the government’s motion. Citing *Anders v. California*, 386 U.S. 738, 744 (1967), counsel stated that Wietecha has no non-frivolous argument against enforcement of his appeal waiver. Counsel also requested permission to withdraw from representing Wietecha. *See id.* We gave Wietecha an opportunity to file a pro se response to the motion to enforce, but he has not done so.

We have reviewed the proceedings in accordance with our obligation under *Anders*. *See id.* at 744. We conclude the *Hahn* factors have been satisfied, and there is no non-frivolous argument to make against enforcing the appellate waiver. Accordingly, we grant the motion to enforce and dismiss this appeal. We also grant counsel’s motion to withdraw.

Entered for the Court
Per Curiam