

NONPRECEDENTIAL DISPOSITION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 January 31, 2024
Decided February 1, 2024

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

No. 22-3020

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

MONTEZ L. WELLS,
Defendant-Appellant.

Appeal from the United States District
Court for the Southern District of
Indiana, Indianapolis Division.

No. 1:21CR00193-003

James Patrick Hanlon,
Judge.

ORDER

Montez Wells pleaded guilty under Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure to conspiring to distribute controlled substances and was sentenced to 240 months in prison. Although his plea agreement contains a broad appeal waiver, Wells filed a notice of appeal. His appointed counsel contends 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 appeal and addresses issues that an appeal of this kind might be expected to involve. Because counsel's analysis appears thorough,

and Wells has not responded to the motion, see CIR. R. 51(b), we limit our review to the subjects that counsel discusses. See *United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014). We grant counsel's motion and dismiss the appeal.

In April 2022, a federal grand jury returned a superseding indictment that charged Wells with conspiring to distribute controlled substances, 21 U.S.C. §§ 841(a)(1), 846, possessing with intent to distribute 40 grams or more of fentanyl, *id.* § 841(a)(1), and interfering with commerce by threats or violence. 18 U.S.C. § 1951. The charges arose from a drug-trafficking operation in which Wells, along with 19 codefendants, distributed methamphetamine and fentanyl in Indianapolis, Indiana.

Wells entered a written plea agreement with the government under Rule 11(c)(1)(C). In exchange for Wells pleading guilty to the drug conspiracy, the government dismissed the remaining charges. In the plea agreement, Wells admitted to his involvement in the drug-trafficking operation and stipulated that he would receive a sentence within the range of 210 to 262 months' imprisonment. Wells also waived his right to appeal his conviction and sentence, including the length and conditions of supervised release and the amount of any fine.

The district court held a change-of-plea hearing, at which it accepted the plea agreement and the parties' agreed sentencing range under Rule 11(c)(1)(C). Before doing so, the court placed Wells under oath and engaged in a colloquy with him. The court described the conspiracy charge, Wells's understanding of the plea agreement and sentencing possibilities, and the voluntariness of his choice to enter a plea. The court also explained the appeal waiver, and Wells affirmed that he understood and agreed to that provision. After hearing and agreeing to the factual basis, Wells entered a plea of guilty, which the court accepted.

Before sentencing, the probation office circulated a presentence investigation report. Based on a total offense level of 35 and a criminal history category of IV, the PSR set the imprisonment range under the Sentencing Guidelines at 235 to 293 months. In his sentencing memorandum, Wells sought a sentence of 120 months' imprisonment despite having agreed in the Rule 11(c)(1)(C) plea to a sentence within the range of 210 to 262 months. The government, noting that Wells's request constituted a breach of the plea agreement, requested the court to enforce the terms of the agreement.

At the sentencing hearing, Wells clarified that he did not wish to withdraw his guilty plea. The court then adopted without objection the PSR's calculation of the

guidelines range, and imposed a term of 240 months' imprisonment and 5 years' supervised release.

Counsel first informs us that Wells wishes to challenge his guilty plea on appeal, so counsel discusses whether any challenge would be frivolous. See *United States v. Konczak*, 683 F.3d 348, 349 (7th Cir. 2012). Although Wells moved to withdraw his guilty plea, he abandoned those efforts in the district court, so we would review his challenge to the plea for plain error. See *United States v. Kilcrease*, 665 F.3d 924, 927 (7th Cir. 2012). But any plain-error challenge to the validity of the plea would be pointless. A review of the hearing transcript reflects that the district court complied with the requirements of Rule 11(b) of the Federal Rules of Criminal Procedure. Under oath, Wells confirmed that he understood the charge, the penalties, and the rights he was waiving; he also affirmed that his plea was voluntary, not the product of coercion or given in exchange for a promise.

Counsel next considers, and correctly concludes, that challenging Wells's sentence would be frivolous because the broad appeal waiver forecloses any argument. An appeal waiver "stands or falls with the underlying agreement and plea." *United States v. Nulf*, 978 F.3d 504, 506 (7th Cir. 2020). In his plea agreement, Wells waived his "right to appeal the conviction and sentence imposed in this case on any ground," including the term and conditions of supervised release and the amount of any fine. Because Wells's guilty plea is valid, we would enforce the waiver. See *Nulf*, 978 F.3d at 506. And counsel appropriately rejects any argument that an exception to the waiver could apply: Wells's 240-month sentence does not exceed the statutory maximum, see 21 U.S.C. § 841(b)(1)(A), and the court did not consider any constitutionally impermissible factor at sentencing. See *Nulf*, 978 F.3d at 506.

Finally, counsel informs us that Wells would like to argue that his trial lawyer was ineffective. But such a claim is best reserved for a collateral attack, when a more complete record can be developed. See *Massaro v. United States*, 538 U.S. 500, 504–05 (2003); *United States v. Cates*, 950 F.3d 453, 457 (7th Cir. 2020).

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