

NONPRECEDENTIAL DISPOSITION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 19, 2022

Decided June 7, 2023

Before

DIANE P. WOOD, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 21-3374

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

Appeal from the United States
District Court for the Eastern
District of Wisconsin.

v.

No. 2:20-cr-00189-PP-1

DENNIS M. CZYSZ,
Defendant-Appellant.

Pamela Pepper,
Chief Judge.

ORDER

As of 2019, Dennis M. Czysz possessed and had distributed hundreds of photos and pictures depicting child pornography. Some of these depictions were quite graphic, and some involved very young (*i.e.*, three- to five-year-old) children. He was apprehended after the National Center for Missing and Exploited Children received a tip about his activities. At the time, Czysz already had two prior Wisconsin convictions for similar offenses. The first occurred in 2000, when he was found guilty of exposing a child to harmful material in violation of Wis. Stat. § 948.11(2)(a); the second occurred in 2005, when he was convicted of four counts of possession of child pornography in violation of

Wis. Stat. § 948.12(1m). As a result, he was under a lifetime obligation under state law to register as a sex offender. But his first encounter with federal criminal law did not come until the 2019 arrest, which led to charges of unlawful distribution and possession of child pornography, in violation of 18 U.S.C. §§ 2252A(a)(2)(A) and (b)(1), and §§ 2252A(a)(5)(B) and (b)(2).

Czyszc pleaded guilty to the distribution count and entered a written plea agreement in which the government promised to dismiss the possession count in return for Czyszc's waiver of his right to appeal his sentence (among other things). The waiver is comprehensive:

Based on the government's concessions in this agreement, the defendant knowingly and voluntarily waives his right to appeal his sentence in this case and further waives his right to challenge his conviction or sentence in any post-conviction proceedings As used in this paragraph, the term "sentence" means any term of imprisonment, term of supervised release, term of probation, supervised release condition, fine, forfeiture order, and restitution order.

It contains exceptions only for punishment in excess of the statutory maximum, reliance on any constitutionally impermissible factor, ineffective assistance of counsel in connection with the negotiation of the plea agreement or sentencing, or a claim that the agreement was entered involuntarily. At the change-of-plea hearing, the district court confirmed Czyszc's understanding that he had knowingly waived his right to appeal. In accordance with its understanding of the mandatory minimum as required by 18 U.S.C. § 2252A(b)(1), the court sentenced Czyszc to 180 months in prison.

To our surprise, Czyszc's brief in this court has nothing to say about the appeal waiver. Instead, it argues the merits of the question whether a prior conviction for possession of child pornography in violation of Wis. Stat. § 948.12(1m) may be used as a predicate offense for purposes of the enhanced statutory minimum under 18 U.S.C. § 2252A(b)(1). Our response to his merits argument is "Not so fast!" If the appeal waiver is valid, he has no right to a decision on the merits.

It is well established that "an appeal waiver must be enforced if its 'terms are express and unambiguous, and the record shows that the defendant knowingly and voluntarily entered into the [plea] agreement.'" *United States v. Nulf*, 978 F.3d 504, 506–07 (7th Cir. 2020) (quoting *United States v. Haslam*, 833 F.3d 840, 844 (7th Cir. 2016)). The waiver in Czyszc's agreement meets those criteria. It expressly includes an appeal of his sentence—exactly the kind of appeal he is attempting to advance here.

Finally, the government has properly briefed the question whether the appeal waiver is binding, but Czysz offered exactly nothing in response. As we noted, his opening brief was silent on the subject, and he did not file a reply brief. Under the circumstances, we have no trouble giving effect to the waiver and dismissing Czysz's appeal.

APPEAL DISMISSED