NONPRECEDENTIAL DISPOSITION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 October 30, 2024
Decided October 31, 2024

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 24-1483

UNITED STATES OF AMERICA, *Plaintiff-Appellee*,	Appeal from the United States District Court for the Central District of Illinois.
v.	No. 21-CR-40028-001
DEVEN LUCAS DESCHEPPER, *Defendant-Appellant*.	James E. Shadid, *Judge*.

O R D E R

Deven Deschepper pleaded guilty to possessing with intent to distribute marijuana, possessing a firearm in furtherance of a drug trafficking crime, and being a felon in possession of a firearm. The district court sentenced him to 204 months of imprisonment and 2 years of supervised release. Despite a broad appeal waiver in his plea agreement, Deschepper filed a notice of appeal. His appointed counsel asserts that the appeal is frivolous and seeks to withdraw under *Anders v. California*, 386 U.S. 738, 744 (1967). Counsel's brief details the nature of the case and discusses issues that an appeal of this kind might be expected to involve. Because the analysis appears thorough, we limit our review to the subjects that counsel discusses and that

Deschepper raises in his response under Circuit Rule 51(b). *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

After receiving a tip from a confidential informant, agents of the Quad City Metropolitan Enforcement Group (a multijurisdictional task force) arranged three controlled purchases of marijuana from Deschepper. In searches of Deschepper's car and residence, agents found substantial quantities of cannabis and psilocybin in various forms, drug paraphernalia and packaging materials, cash, firearms, and ammunition.

A federal grand jury indicted Deschepper on four counts: (1) distribution of marijuana, 21 U.S.C. § 841(a)(1), (b)(1)(D); (2) possession with intent to distribute cocaine and marijuana, *id.* § 841(a)(1), (b)(1)(C)–(D); (3) possession of a firearm in furtherance of drug trafficking, 18 U.S.C. § 924(c)(1)(A); and (4) felon in possession of a firearm, *id.* §§ 922(g), 924(a)(2), 924(e).

Deschepper agreed with the government to plead guilty to the lesser-included offense of count two (possession with intent to distribute marijuana) as well as counts three and four. The written plea agreement included an appellate waiver under which Deschepper expressly waived "all rights to appeal and/or collaterally attack his conviction and sentence" on any ground other than ineffective assistance of counsel.

A magistrate judge conducted the change-of-plea hearing, placing Deschepper under oath before conducting a colloquy. The court confirmed that Deschepper understood the charges, forfeiture notice, and applicable penalties; his trial rights; the consequences of pleading guilty; and the role of the Sentencing Guidelines. *See* FED. R. CRIM. P. 11(b)(1)(A)-(J), (L), (M). The court separately explained the appellate waiver, and Deschepper affirmed that he understood and agreed to that provision. *See* FED. R. CRIM. P. 11(b)(1)(N). Deschepper's trial counsel noted that Deschepper would seek to postpone his federal sentencing because he was engaged in state post-conviction proceedings that could affect his status as a career offender. Deschepper confirmed, however, that he intended to plead guilty no matter what. (Ultimately, his post-conviction petitions were denied before sentencing.) Deschepper then heard and agreed to the factual basis and entered a plea of guilty. The magistrate judge recommended acceptance of the plea.

After receiving no timely objections to the report and recommendation, the district judge accepted the plea. The district judge later sentenced Deschepper to a 204-month prison term, which reflected concurrent 120-month prison sentences on

counts two and four and a consecutive 84-month prison sentence on count three. The court also imposed concurrent two-, three-, and two-year terms of supervised release.[1]

Counsel informs us that Deschepper wishes to withdraw his guilty plea and therefore first considers whether Deschepper could raise a non-frivolous argument that his plea was not knowing and voluntary. *See United States v. Larry*, 104 F.4th 1020, 1022 (7th Cir. 2024). We agree with counsel that such a challenge would be frivolous. Deschepper did not move in the district court to withdraw his plea, so we would review only for plain error. *United States v. Schaul*, 962 F.3d 917, 921 (7th Cir. 2020). The transcript of the plea colloquy shows that the court substantially complied with the requirements of Rule 11(b) and so ensured that the plea was knowing and voluntary. *See United States v. Davenport*, 719 F.3d 616, 618 (7th Cir. 2013). Under oath, Deschepper confirmed that he understood the charges, penalties, and rights he was waiving. He also affirmed that his plea was voluntary, not the product of coercion, and not given in exchange for a promise. Although the magistrate judge did not advise Deschepper of its authority to order restitution, *see* FED. R. CRIM. P. 11(b)(1)(K), none was ordered, so counsel correctly concludes that the omission was harmless. *See Larry*, 104 F.4th at 1023. Therefore, Deschepper could not establish that it was plain error for the court to credit his sworn statements. *See United States v. Collins*, 796 F.3d 829, 835 (7th Cir. 2015).

In his Rule 51(b) response, Deschepper argues that he did not knowingly enter his guilty plea because his trial counsel had misinformed him that he could be resentenced if the pending post-conviction proceedings in Illinois affected his career-offender status in federal court. This argument, however, is not suited for direct appeal. Claims of ineffective assistance of counsel—which are exempt from Deschepper's waiver—should be reserved for collateral review, when Deschepper can introduce the evidence that he refers to and create a record. *See Massaro v. United States*, 538 U.S. 500, 504–05 (2003); *United States v. Cates*, 950 F.3d 453, 457 (7th Cir. 2020).

Counsel next considers whether Deschepper could challenge his sentence and correctly determines that the appeal waiver in his plea agreement forecloses any such challenge. An appeal waiver "stands or falls" with the plea agreement of which it is part. *United States v. Nulf*, 978 F.3d 504, 506 (7th Cir. 2020). Here, as we have stated, Deschepper lacks any non-frivolous argument that his guilty plea was not knowing and voluntary. Therefore, the appellate waiver is enforceable unless an exception applies.

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[1] In what appears to be a deviation from the oral pronouncement, the written judgment reflects only a two-year term of supervised release.

See United States v. Brown, 973 F.3d 667, 718 (7th Cir. 2020). As counsel explains, however, Deschepper's prison sentence and terms of supervised release do not exceed the applicable statutory maximums. And the record establishes that the court did not consider any constitutionally impermissible factors. *See Brown*, 973 F.3d at 718. We would thus enforce the appellate waiver with respect to any sentencing arguments.

The same is true for the additional issues that Deschepper says he would raise on direct appeal to challenge both his conviction and sentence. The broad appellate waiver forecloses them all.

We GRANT counsel's motion to withdraw and DISMISS the appeal.