

NONPRECEDENTIAL DISPOSITION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 April 15, 2024

Decided April 16, 2024

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 22-2505

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

EMMANUEL JAMES,
Defendant-Appellant.

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

No. 20-CR-89-2-JPS

J.P. Stadtmueller,
Judge.

ORDER

Emmanuel James pleaded guilty to one count of possession with intent to distribute controlled substances, 21 U.S.C. § 841(a)(1), (b)(1)(C), and the district court sentenced him to 60 months in prison and 3 years of supervised release. Although his plea agreement contained a broad appellate waiver, James filed a notice of appeal. His appointed lawyer asserts that the appeal is frivolous and seeks to withdraw under *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, we limit our review to the subjects that

counsel discusses, *see United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014), as well as the issues raised by James in his response to counsel's motion, *see* CIR. R. 51(b).

In May 2020, James was a passenger of a vehicle driven by Antonio Holt, the target of a drug-trafficking investigation. After law enforcement officers stopped the vehicle, they searched it and found \$30,000 in cash and two handguns. Law enforcement officers later obtained a warrant to search James's home, and found 300 grams of marijuana, 50 grams of crystal methamphetamine, 280 grams of heroin, 180 oxycodone pills, and 12 firearms.

James was charged with two counts: one for possession with intent to distribute controlled substances under 21 U.S.C. § 841(a)(1), (b)(1)(B), and (b)(1)(C), and the other for possession of a firearm in furtherance of a drug trafficking offense under 18 U.S.C. § 924(c)(1)(A)(i). He moved to suppress the evidence from the search of his home. The district court denied the motion, ruling that although the officers did not have probable cause to search James's home, the officers relied in good faith on a facially valid warrant and thus the exclusionary rule did not apply.

James later pleaded guilty to one count of possession with intent to distribute controlled substances under 21 U.S.C. § 841(a)(1), (b)(1)(C). In the written agreement, James waived "any claims he may have raised in any pretrial motion." The agreement also contained a broad appellate waiver in which James agreed to waive his right to appeal his conviction and sentence.

At sentencing, the district court heard the parties' respective arguments. The government sought a sentence of 60 months' imprisonment based on the seriousness of James's offense. James sought a sentence of 36 months' imprisonment based on the mitigating factors, such as his close family relationships and substance abuse problems that he experienced since the death of his brother. After considering the mitigating and aggravating factors, the court sentenced James to 60 months' imprisonment and 3 years' supervised release.

Counsel begins by confirming that James wishes to withdraw his guilty plea. *See United States v. Konczak*, 683 F.3d 348, 349 (7th Cir. 2012); *United States v. Knox*, 287 F.3d 667, 671 (7th Cir. 2002). She explores whether there is a nonfrivolous basis to do so under Rule 11 of the Federal Rules of Criminal Procedure. James, in his Rule 51(b) response, insists that his plea agreement is invalid because he was unaware that he waived his right to challenge the denial of his motion to suppress. But we agree with

counsel that any challenge to the plea would be frivolous. James did not move to withdraw his guilty plea in the district court, so our review would be for plain error. *United States v. Davenport*, 719 F.3d 616, 618 (7th Cir. 2013). And a review of the plea-colloquy transcript reflects that the court substantially complied with Rule 11. Under oath, James confirmed that he understood the charge (including maximum possible penalties), the trial rights he was giving up, and how his sentence would be determined; he also confirmed that, with counsel, he reviewed the plea agreement, which expressly stated that he waived “any claims he may have raised in any pretrial motions.” Because James’s statements under oath are presumed true, *see United States v. Smith*, 989 F.3d 575, 582 (7th Cir. 2021), it would be frivolous to argue that accepting the plea was plain error.

Next, counsel addresses whether James could challenge his sentence, and correctly concludes that his appeal waiver precludes such a challenge. An appeal waiver “stands or falls with the underlying agreement and plea.” *United States v. Nulf*, 978 F.3d 504, 506 (7th Cir. 2020). When an appeal waiver is present, the only potential issue is whether a narrow and rare exception to the waiver applies, *see United States v. Campbell*, 813 F.3d 1016, 1018 (7th Cir. 2016), and we agree with counsel that it would be frivolous for James to argue that any exception applies here. As counsel notes, neither James’s 5-year term of imprisonment nor his 3-year term of supervised release exceeds the statutory maximum. *See* 21 U.S.C. § 841(b)(1)(C). And nothing in the record suggests that the district court considered any constitutionally impermissible factors. *See Campbell*, 813 F.3d at 1018.

Finally, James contends that his trial counsel was ineffective because he misinformed him about the rights he was waiving on appeal. But such a claim is best reserved for a collateral attack, when a more complete record can be developed. *See United States v. Cates*, 950 F.3d 453, 457 (7th Cir. 2020).

Therefore, we GRANT counsel’s motion and DISMISS the appeal.