

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4463

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MALCOLM LAMONT JACKSON, a/k/a X,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at
Wilmington. Terrence W. Boyle, District Judge. (7:19-cr-00113-BO-1)

Submitted: May 19, 2022

Decided: May 23, 2022

Before MOTZ and HARRIS, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed in part and dismissed in part by unpublished per curiam opinion.

ON BRIEF: Elisa Cyre Salmon, SALMON LAW FIRM, LLP, Lillington, North Carolina,
for Appellant. David A. Bragdon, Joshua L. Rogers, Assistant United States Attorneys,
OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Malcolm Lamont Jackson seeks to appeal the 144-month sentence imposed following his guilty plea to conspiracy to distribute and possess with intent to distribute 28 grams or more of cocaine base, in violation of 21 U.S.C. §§ 841(b)(1)(B), 846, and distribution and possession with intent to distribute a quantity of cocaine base, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C). Jackson's counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), questioning whether Jackson's sentence is reasonable. Although informed of his right to file a pro se supplemental brief, Jackson has not done so.

The Government has filed a motion to dismiss the appeal on the ground that Jackson's appeal is barred by the appeal waiver included in the plea agreement. We review de novo the validity of an appeal waiver. *United States v. Cohen*, 888 F.3d 667, 678 (4th Cir. 2018). Where, as here, the Government seeks to enforce the appeal waiver and has not breached the plea agreement, we will enforce the waiver if it is valid and the issue being appealed falls within the waiver's scope. *United States v. Manigan*, 592 F.3d 621, 627 (4th Cir. 2010). A defendant validly waives his appeal rights if he agreed to the waiver "knowingly and intelligently." *Id.* To determine whether a waiver is knowing and intelligent, "we consider the totality of the circumstances, including the experience and conduct of the defendant, his educational background, and his knowledge of the plea agreement and its terms." *United States v. McCoy*, 895 F.3d 358, 362 (4th Cir. 2018) (internal quotation marks omitted). Generally, "if a district court questions a defendant regarding the waiver of appellate rights during the [Fed. R. Crim. P.] 11 colloquy and the

record indicates that the defendant understood the full significance of the waiver, the waiver is valid.” *Id.* (internal quotation marks omitted).

Upon review of the plea agreement and the transcript of the Rule 11 hearing, we conclude that Jackson knowingly and voluntarily waived his right to appeal and that any challenge to his sentence falls squarely within the compass of the appellate waiver. Moreover, contrary to counsel’s contentions, the Government timely filed its motion to dismiss. *See* 4th Cir. R. 27(f). Accordingly, we grant the Government’s motion in part.

Pursuant to *Anders*, we have reviewed the entire record and have found no meritorious issues for appeal that fall outside the scope of the appeal waiver. We therefore affirm the remainder of the district court’s judgment. This court requires that counsel inform Jackson, in writing, of the right to petition the Supreme Court of the United States for further review. If Jackson requests that a petition be filed, but counsel believes that such a petition would be frivolous, then counsel may move in this court for leave to withdraw from representation. Counsel’s motion must state that a copy thereof was served on Jackson.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED IN PART, DISMISSED IN PART