

United States Court of Appeals
For the Eighth Circuit

No. 19-2833

United States of America,

Plaintiff - Appellee,

v.

Montez L. Clayton,

Defendant - Appellant.

Appeal from United States District Court
for the Western District of Missouri - Kansas City

Submitted: March 17, 2020

Filed: March 20, 2020
[Unpublished]

Before COLLTON, WOLLMAN, and KELLY, Circuit Judges.

PER CURIAM.

In 2019, Montez Clayton pleaded guilty to four counts of Hobbs Act robbery, in violation of 18 U.S.C. § 1951(a), and one count of using a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A)(ii). The

district court¹ sentenced him to a total of 240 months in prison and five years of supervised release, and ordered restitution of \$250. Clayton appeals, and his counsel has filed a brief under *Anders v. California*, 386 U.S. 738 (1967), acknowledging that the plea agreement included an appeal waiver, but challenging the substantive reasonableness of the sentence and the district court's purported failure to address adequately the factors under 18 U.S.C. § 3553(a).

Following de novo review, we conclude that this appeal falls within the scope of the appeal waiver. We will enforce the waiver because the plea agreement and plea colloquy demonstrate that Clayton knowingly and voluntarily entered into the plea agreement, including its waiver provisions, and that enforcing waiver would not result in miscarriage of justice. *See United States v. Andis*, 333 F.3d 886, 889-92 (8th Cir. 2003) (en banc). In addition, we have independently reviewed the record under *Penson v. Ohio*, 488 U.S. 75, 80 (1988), and have found no non-frivolous issues for appeal. We therefore grant counsel leave to withdraw and dismiss this appeal.

¹The Honorable Greg Kays, United States District Judge for the Western District of Missouri.

United States Court of Appeals

For The Eighth Circuit

Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24,329

St. Louis, Missouri 63102

Michael E. Gans
Clerk of Court

VOICE (314) 244-2400
FAX (314) 244-2780
www.ca8.uscourts.gov

March 20, 2020

Mr. Montez L. Clayton
U.S. PENITENTIARY
33161-045
P.O. Box 3000
Pine Knot, KY 42635-0000

RE: 19-2833 United States v. Montez Clayton

Dear Mr. Clayton:

The court has issued an opinion in this case. Judgment has been entered in accordance with the opinion. The opinion will be released to the public at 10:00 a.m. today. Please hold the opinion in confidence until that time.

Your attorney has been granted leave to withdraw. Please review Federal Rules of Appellate Procedure and the Eighth Circuit Rules on post-submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. A notice is attached to this letter, notifying you of the procedures.

Michael E. Gans
Clerk of Court

BNW

Enclosure(s)

cc: Mr. Sean Thomas Foley
Ms. Ashleigh Ragner
Mr. Todd M. Schultz
Ms. Paige A. Wymore-Wynn

District Court/Agency Case Number(s): 4:18-cr-00111-DGK-1

Notice to Pro Se Litigants in Anders Cases

The court has issued its opinion in your appeal and has permitted your attorney to withdraw from the case. The court treated this appeal as an Anders case. Section V of the Eighth Circuit's Plan to Implement the Criminal Justice Act of 1964, effective August 1, 2015, provides as follows:

Where counsel is granted leave to withdraw pursuant to the procedures of Anders v. California, 386 U.S. 738 (1967), and Penson v. Ohio, 488 U.S. 75 (1988), counsel's duty of representation is completed, and the clerk's letter transmitting the decision of the court will notify the defendant of the procedures for filing pro se a timely petition for panel rehearing, a timely petition for rehearing en banc, and a timely petition for writ of certiorari.

This notice will provide you with information about these procedures.

Under Federal Rule of Appellate Procedure 40(a)(1) and Federal Rule of Appellate Procedure 35(c), a petition for rehearing and/or petition for rehearing en banc must be filed within 14 days of the date of the court's judgment. Please note that your petition for rehearing/and or petition for rehearing en banc must be received in the clerk's office within that 14-day period. No grace period is allowed for mailing, and the date of the post-mark is irrelevant. Any petition for rehearing and/or petition for rehearing en banc which is not received within that 14-day period for filing may be denied as untimely. Under Federal Rule of Appellate Procedure 35(b) (2) petitions for rehearing are limited to 15 pages. Only one copy is required.

If you ask for an extension of time to file the petition for rehearing, your motion for extension of time must be received within the clerk's office within the 14 days allowed for filing the petition for rehearing. Under Eighth Circuit Rule 27A(15), the clerk may grant an extension of time not to exceed 14 days.

You may seek a writ of certiorari from the Supreme Court of the United States without filing for rehearing in the court of appeals. You may also seek rehearing in the court of appeals and then seek certiorari if the court of appeals denies your petition for rehearing. Under Supreme Court Rule 13, a petition for a writ of certiorari in a criminal case is timely if it is filed with the Clerk of the Supreme Court within 90 days after the entry of the court of appeals' judgment. The rule also provides that if a timely petition for rehearing is filed with the court of appeals, the 90-day period begins to run from the date the court of appeals denies the petition for rehearing.

The petition for the writ of certiorari is filed directly with the Clerk of the Supreme Court of the United States. You may contact the Clerk at the following address:

Clerk's Office
Supreme Court Building
1 First Street, N.E.
Washington, D.C. 20543
202-479-3000