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

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February 07, 2022

Mr. Lester Waters Jr.
FEDERAL CORRECTIONAL INSTITUTION
12892-273
1900 Simler Avenue
P.O. Box 7365
Big Spring, TX 79720-7799

RE: 20-3659 United States v. Lester Waters, Jr.

Dear Sir:

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

NDG

Enclosure(s)

cc: Mr. Frank James Driscoll
Mr. Eric D. Kelderman
Ms. Heather Colleen Sazama
Mr. Matthew W. Thelen

District Court/Agency Case Number(s): 5:18-cr-50015-JLV-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

United States Court of Appeals

For the Eighth Circuit

No. 20-3659

United States of America

Plaintiff - Appellee

v.

Lester Waters, Jr.

Defendant - Appellant

Appeal from United States District Court
for the District of South Dakota - Western

Submitted: January 20, 2022
Filed: February 7, 2022
[Unpublished]

Before COLLOTON, BENTON, and STRAS, Circuit Judges.

PER CURIAM.

Lester Waters Jr. received a 240-month sentence after a jury found him guilty of four counts of assault, 18 U.S.C. § 113(a)(3), (a)(6), and two counts of discharging a firearm during a crime of violence, 18 U.S.C. § 924(c)(1)(A)(iii). An *Anders* brief questions whether the district court[1] should have suppressed Waters's pre-*Miranda*-

[1]The Honorable Jeffrey L. Viken, United States District Judge for the District of South Dakota, adopting the report and recommendations of the Honorable Daneta Wollmann, United States Magistrate Judge for the District of South Dakota.

warning statements. *See Anders v. California*, 386 U.S. 738 (1967); *see also Miranda v. Arizona*, 384 U.S. 436 (1966). And a pro se supplemental brief raises a host of other issues.

We conclude that the challenged statements were admissible. Some were made "on his own initiative," *Stumes v. Solem*, 752 F.2d 317, 322–23 (8th Cir. 1985); others related to "public safety," *United States v. Jones*, 842 F.3d 1077, 1082 (8th Cir. 2016); and still others were responses to requests for clarification, *see Butzin v. Wood*, 886 F.2d 1016, 1018 (8th Cir. 1989).

Waters's pro-se claims do not fare any better. He has not raised a colorable challenge to the composition of the jury pool, *see United States v. Rodriguez*, 581 F.3d 775, 790 (8th Cir. 2009); the jurors themselves did not commit any prejudicial misconduct, *see United States v. Tucker*, 137 F.3d 1016, 1030 (8th Cir. 1998); and there is no evidence that any of the witnesses perjured themselves, *see United States v. Lewis*, 976 F.3d 787, 796 (8th Cir. 2020). Nor was he entitled to have the jury instructed on a lesser-included offense, *see United States v. Felix*, 996 F.2d 203, 208 (8th Cir. 1993); or have the government disclose anything else, *see United States v. Pendleton*, 832 F.3d 934, 940 (8th Cir. 2016). Finally, he cannot now challenge the admissibility of his *own* evidence from trial. *See Ohler v. United States*, 529 U.S. 753, 755 (2000).

We have also independently reviewed the record and conclude that no other non-frivolous issues exist. *See Penson v. Ohio*, 488 U.S. 75, 82–83 (1988). We accordingly affirm the judgment of the district court and grant counsel permission to withdraw.
