

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 00-2522

United States of America,

Appellee,

v.

Raymond Terrance Franklin, also
known as John Edwin Bailey,

Appellant.

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Appeal from the United States
District Court for the
District of Minnesota

[UNPUBLISHED]

Submitted: July 5, 2001

Filed: July 11, 2001

Before McMILLIAN, BOWMAN, and MORRIS SHEPPARD ARNOLD,
Circuit Judges.

PER CURIAM.

Raymond Terrance Franklin appeals from the final judgment entered in the District Court¹ for the District of Minnesota after he pleaded guilty to conspiring to distribute and possess with the intent to distribute cocaine, in violation of 21 U.S.C. §§ 841 and 846. The district court sentenced him to 125 months imprisonment and 5

¹The Honorable Donovan W. Frank, United States District Judge for the District of Minnesota.

years supervised release. On appeal, Franklin's counsel has filed a brief and moved to withdraw pursuant to Anders v. California, 386 U.S. 738 (1967). Franklin has filed a pro se supplemental brief, arguing a prior robbery conviction should not have been counted as a predicate offense under the career-offender Guideline, his counsel was ineffective, and his sentence violated Apprendi v. New Jersey, 530 U.S. 466 (2000).

Upon a thorough review of the record, we conclude Franklin knowingly and voluntarily waived his right to appeal his sentence in his plea agreement. See United States v. Morrison, 171 F.3d 567, 568 (8th Cir. 1999); United States v. Michelsen, 141 F.3d 867, 871-72 (8th Cir.), cert. denied, 525 U.S. 942 (1998). Accordingly, we enforce the appeal waiver, dismiss the appeal, and grant counsel's motion to withdraw.²

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

²Any ineffective- assistance claim not waived should be deferred to a 28 U.S.C. § 2255 proceeding. To the extent Franklin's Apprendi argument is not foreclosed by the plea agreement, we reject it as meritless. See United States v. Aguayo-Delgado, 220 F.3d 926, 934 (8th Cir.) (holding sentences within statutory range authorized by § 841(b)(1)(C) without reference to drug quantity are permissible under Apprendi even where drug quantity was not charged in indictment or found by jury beyond reasonable doubt), cert. denied, 121 S. Ct. 600 (2000).