

United States Court of Appeals  
For the Eighth Circuit

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No. 22-3614

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United States of America

*Plaintiff - Appellee*

v.

Dwayne Warren Gerard, Sr.

*Defendant - Appellant*

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

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Submitted: September 18, 2023

Filed: October 31, 2023

[Unpublished]

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Before COLLTON, GRASZ, and KOBES, Circuit Judges.

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PER CURIAM.

Dwayne Gerard pleaded guilty to sexually exploiting children, 18 U.S.C. § 2251(a), (e). His only claim of error is that his sentence is substantively unreasonable. He concedes that he waived his right to appeal in his plea agreement but argues that enforcing the waiver would result in a miscarriage of justice. See United States v. Andis, 333 F.3d 886, 889–90 (8th Cir. 2003) (en banc). Although

the district court<sup>1</sup> imposed a sentence two to three times greater than what the parties recommended, it is still a below-Guidelines sentence. So enforcing the waiver would not work a miscarriage of justice. See United States v. Pierre, 912 F.3d 1137, 1143–44 (8th Cir. 2019). We dismiss the appeal.

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<sup>1</sup>The Honorable Daniel L. Hovland, United States District Judge for the District of North Dakota.