NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. TERRY JACKSON, Defendant - Appellant.	No. 06-50354 D.C. No. CR-03-00084-VAP-06 MEMORANDUM[*]

Appeal from the United States District Court
for the Central District of California
Virginia A. Phillips, District Judge, Presiding

Submitted October 24, 2008[**]
Pasadena, California

Before: PREGERSON, HALL and N.R. SMITH, Circuit Judges.

Terry Jackson pleaded guilty before trial to one count of conspiracy to manufacture and distribute phenylcyclohexylpiperidine ("PCP"). Jackson filed a notice of appeal, but Jackson's attorney subsequently filed a motion to withdraw as counsel of record and a brief pursuant to *Anders v. California*, 386 U.S. 738

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[*] This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

[**] The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

(1967), stating there are no grounds for relief. Appellant was allowed time to file a *pro se* brief, but did not do so.[1] Because our review of the *Anders* brief and our independent review of the record under *Penson v. Ohio*, 488 U.S. 75, 83 (1988) reveal no grounds for relief, we affirm the district court's judgment and grant counsel's motion to withdraw.

In his brief, Jackson's counsel addresses several conceivable issues, including (1) whether the district court erred in denying the motion to suppress wiretap evidence; (2) the adequacy of Jackson's guilty plea and the district Court's Rule 11 colloquy; and (3) whether the sentence imposed was reasonable. The brief concludes, however, that there are no non-frivolous grounds for relief, because Jackson waived his right to appeal in his plea agreement.

Jackson's guilty plea generally waives all constitutional claims occurring before the plea. *See Tollett v. Henderson*, 411 U.S. 258, 266 (1973). Further, in the plea agreement, Jackson expressly gave up his right to appeal "any sentence imposed by the court," so long as (1) the sentence was within the statutory maximum, (2) the guidelines range did not depart above 34, and (3) the sentence was within or below the range corresponding to the total offense level and criminal history category. Our review of the record reveals that Jackson was sentenced

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[1] *United States v. Reed*, No. 06-50040, *United States v. Williams*, No. 06-50048, *United States v. Johnson*, No. 06-50302, and *United States v. Green* , No. 06-50069 are companion cases to this appeal but are decided separately.

within the terms of the plea agreement and that he knowingly and voluntarily waived his right to appeal. *See United States v. Nguyen*, 235 F.3d 1179, 1182 (9th Cir. 2000) (stating that an appeal waiver is valid when it is entered knowingly and voluntarily).

Jackson also specifically reserved "the right to withdraw his plea of guilty if [co-]defendant [Rodrick] Reed's Renewed Motion to Suppress Wiretap Evidence is granted by the Court." We construe this language in Jackson's plea agreement as a reservation of the "warrantless wiretap" issue raised by Reed in a supplemental motion to suppress. *See United States v. Garcia*, 522 F.3d 855, 859–60 (9th Cir. 2008) ("Plea agreements are contracts between a defendant and the government, and we generally construe ambiguous language in favor of the defendant.") (quoting *United States v. Joyce*, 357 F.3d 921, 922–23 (9th Cir. 2004)). The "warrantless wiretap" issue involved allegations that officers (1) illegally intercepted calls from a cellular telephone for which there was no court order, (2) transferred the illegally intercepted calls to the wireroom for an authorized wiretap to make the call appear to be legally intercepted, and (3) colluded with the telephone company to conceal the illegal act. However, because we have rejected the merits of the "warrantless wiretap" issue in our opinion in the companion case, *United States v. Reed*, No. 06-50040, __ F.3d __, __ (9th Cir. 2009), we conclude that Jackson has no grounds for relief.

Accordingly, we **GRANT** counsel's motion to withdraw and **AFFIRM** the judgment of the district court.