

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

December 9, 2025

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SASKIA IONA MESMER,

Defendant - Appellant.

No. 24-1402
(D.C. Nos. 1:21-CV-00019-PAB
& 1:18-CR-00264-PAB)
(D. Colo.)

ORDER

Before **BACHARACH, MURPHY, and MORITZ**, Circuit Judges.

Ms. Saskia Mesmer was convicted of drug and gun charges and entered a limited waiver of her right to appeal. *See* 21 U.S.C. § 841(a)(1), (b)(1)(C); 18 U.S.C. § 924(c)(1)(A)(i). In district court, she unsuccessfully moved to vacate her sentence and appealed. But her two appellate attorneys moved to withdraw, stating that they lacked any non-frivolous grounds to appeal. *See Anders v. California*, 386 U.S. 738 (1967). We allowed the first attorney to withdraw and now allow the second attorney to do so.

In the motion to vacate her sentence, Ms. Mesmer argued that

- her trial attorney should have challenged the gun charge as duplicitous and presented evidence of mental illness as a mitigating factor at sentencing,

- she had received inadequate notice of the gun charge, and
- her trial counsel should have followed an instruction to file an appeal.

Ms. Mesmer now argues that

- she pleaded guilty when experiencing a crisis because she was off her psychiatric medications and
- the mere presence of a gun isn't enough for guilt.

But Ms. Mesmer waived these arguments by omitting them in her motion to vacate the sentence. *United States v. Cook*, 997 F.2d 1312, 1316 (10th Cir. 1993).

In addition, Ms. Mesmer argues that her trial attorney should have appealed and that the failure to do so is inherently ineffective. But this argument presumes that Ms. Mesmer told the attorney to appeal or had a reasonable appellate argument. The district court found that Ms. Mesmer had not instructed her attorney to appeal, and she does not identify a reasonable basis to challenge this finding. Nor does she present a reasonable argument that she could have presented on appeal, particularly in light of her waiver of appeal rights.

Disposition

We conclude that there are no non-frivolous grounds for appeal. So we grant the motion to withdraw and dismiss the appeal.

Entered for the Court

Robert E. Bacharach
Circuit Judge