

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted November 28, 2023

Decided November 29, 2023

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 23-1414

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

EDMOND J. HARRIS,
Defendant-Appellant.

Appeal from the United States District
Court for the Southern District of
Illinois.

No. 3:18-CR-30090-SMY-1

Staci M. Yandle,
Judge.

ORDER

The district court revoked Edmond Harris's probation and sentenced him to 24 months in prison and 36 months of supervised release after Harris admitted to violating several conditions of his probation. Harris appeals, but his appointed counsel asserts that the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738, 744 (1967). Although a defendant has no absolute right to counsel in an appeal from revocation of probation, *see Gagnon v. Scarpelli*, 411 U.S. 778, 788–90 (1973),

we choose to apply the *Anders* framework in this context as we do with supervised-release revocations, *see, e.g., United States v. Wheeler*, 814 F.3d 856, 857 (7th Cir. 2016). Because the analysis in the brief appears thorough, and Harris has not responded to counsel's motion, *see* CIR. R. 51(b), we limit our review to the subjects that counsel discusses. *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

In December 2020, Harris pleaded guilty to possession with intent to distribute a controlled substance, 21 U.S.C. § 841(a)(1), (b)(1)(C), and possession of a firearm as a felon, 18 U.S.C. §§ 922(g)(1), 924(a)(2). He was sentenced to five years of probation. About ten months later, the district court held a noncompliance hearing to address the probation officer's report of Harris's continued use and possession of controlled substances. Harris refused an offer of residential inpatient treatment, but the court modified the terms of Harris's probation to include a mental health assessment and outpatient counseling as needed. In March 2022, Harris's probation officer filed a petition to revoke probation, alleging that Harris had tested positive for drugs, committed criminal trespass to a residence, and, among other administrative violations, failed to properly report to the officer. But after Harris admitted the drug use, and the government declined to pursue the remaining allegations, the court dismissed the petition because of Harris's "history of attempts to address" his addiction.

At the probation officer's recommendation, the district court later modified Harris's probation to include location monitoring, a curfew, and attendance at a residential drug-treatment program. Harris began attending the treatment program, but he overdosed a few weeks later and then was discharged from the facility a short time later when caught using drugs again. On January 5, 2023, the probation officer filed an amended petition to revoke probation, re-alleging that Harris committed criminal trespass, possessed controlled substances, and failed to report to the officer. The petition added that Harris committed several traffic violations and failed to meaningfully participate in addiction treatment. It classified his most serious violations—possession of a variety of controlled substances on multiple separate occasions—as Grade B. *See* U.S.S.G. § 7B1.1(a)(2).

At his revocation hearing, Harris was placed under oath, and he admitted to all the violations in the amended revocation petition after the government provided a factual basis. The district court then revoked Harris's probation. Based on Harris's Grade B violations and criminal history category of II, the court calculated a guidelines range of 6 to 12 months' imprisonment on each count, *see* U.S.S.G. § 7B1.4(a), and

3 years of supervised release for Count 1 (possession with intent to distribute) and 1 to 3 years of supervised release for Count 2 (possession of a firearm), *see id.* § 7B1.3(g)(1).

In arguing for an eight-month prison sentence and five years of supervised release, the government highlighted Harris's criminal history and persistent noncompliance with probation conditions. Harris requested a sentence of time served with six months of home confinement and location monitoring so that he could receive addiction treatment. He argued that imprisonment for drug-abuse violations would not deter similar conduct or serve rehabilitation goals.

The court began by noting that Harris had squandered the lenience the court had initially exercised in sentencing him to probation instead of prison. Then the court recounted Harris's criminal history, highlighting the felony charges for trespass and possession of cocaine and methamphetamine that Harris had incurred since being placed on probation. It explained that because of his drug abuse, Harris posed a risk to himself and others, and it observed that Harris appeared committed to treatment only when he was before the court. Prison time was now necessary, the court concluded, because "we have exhausted every tool we have in the box." Citing the need for specific deterrence, just punishment, and to protect the public, the court sentenced Harris to consecutive 12-month sentences on the two counts of his original conviction and 36 months of supervised release.

Counsel first represents that Harris wishes to challenge the reasonableness of the sentence. Counsel reports, however, that Harris also wants to argue the district court erred in concluding that he committed criminal trespass. But Harris admitted to this violation under oath and cannot withdraw his admission without also undoing the revocation, which counsel does not understand Harris to intend. *See United States v. Wheaton*, 610 F.3d 389, 390 (7th Cir. 2010) (defendant resigned to revocation decision "cannot be allowed to challenge admissions that undergird that revocation"). Counsel therefore refrains from discussing whether Harris's admissions were knowing and voluntary. *See Wheeler*, 814 F.3d at 857. (Counsel further observes that, even without the Grade C violation of criminal trespass, Harris's sentence could be no different, because the sentence is based on the highest-grade violations; here, Grade B.)

Next, counsel correctly concludes that challenging the calculation of the imprisonment range under the Sentencing Guidelines would be frivolous. As required, the court considered the policy statements in Chapter Seven to calculate a range of 6 to 12 months' imprisonment on each count of conviction. *See U.S.S.G. § 7B1.4(a); United States v. Childs*, 39 F.4th 941, 945 (7th Cir. 2022). And it correctly stated the statutorily

required term of 3 years' supervised release on Count 1, *see* 21 U.S.C. § 841(b)(1)(C), and the statutory maximum of 3 years' supervised release on Count 2, *see* 18 U.S.C. § 3583(b). These figures all fell comfortably within what counsel explains were the statutory maximum sentences of 20 and 10 years for Counts 1 and 2 respectively.

Finally, counsel considers whether Harris could challenge the reasonableness of his sentence and properly concludes that he could not. Because each sentence is within the properly calculated range under the policy statements, we would presume that it is not unreasonably long. *See United States v. Boultinghouse*, 784 F.3d 1163, 1178 (7th Cir. 2015). It would be frivolous to contest that presumption. First, as counsel explains, despite the prolonged discussion at the hearing of Harris's drug problems, at no time did the district court link the length of the prison sentence to a need for drug rehabilitation in violation of *Tapia v. United States*, 564 U.S. 319 (2011). Second, the court considered the factors under 18 U.S.C. § 3553(a), emphasizing the need to deter Harris and protect the public given Harris's numerous violations and prior inability to complete drug-addiction treatment. *See United States v. Yankey*, 56 F.4th 554, 559–60 (7th Cir. 2023). Last, the district court had discretion to run the sentences consecutively. *See* U.S.S.G. § 5G1.3; *United States v. Moore*, 784 F.3d 398, 404 (7th Cir. 2015).

Finally, counsel notes that Harris did not object to any proposed conditions of supervised release, which the court had provided before the hearing, and that the terms and conditions imposed are consistent with 18 U.S.C. § 3553(a) and (b). Even if Harris merely forfeited an appellate challenge to his supervised release, *see United States v. Flores*, 929 F.3d 443, 447 (7th Cir. 2019), counsel identified no potential plain errors with respect to the term or conditions of supervised release, and we agree with that assessment, *see United States v. Kappes*, 782 F.3d 828, 847 (7th Cir. 2015).

We GRANT counsel's motion to withdraw and DISMISS the appeal.