

NONPRECEDENTIAL DISPOSITION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 June 25, 2024

Decided July 1, 2024

Before

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 24-1330

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

FRED T. MOORE,
Defendant-Appellant.

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

No. 3:07-CR-30027-SMY-1

Staci M. Yandle,
Judge.

ORDER

Fred Moore appeals his five-year sentence imposed after his supervised release was revoked. But his appointed counsel asserts that the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738, 744 (1967). We grant the motion and dismiss the appeal.

A defendant does not have an unqualified constitutional right to counsel in revocation proceedings, *see Gagnon v. Scarpelli*, 411 U.S. 778, 789–90 (1973), so the *Anders*

safeguards need not govern our review. Even so, our practice is to apply them. *United States v. Brown*, 823 F.3d 392, 394 (7th Cir. 2016). Because counsel's analysis appears thorough, we limit our review to the subjects she discusses. *See id.* (We notified Moore of the motion, but he did not respond. *See* CIR. R. 51(b).)

Moore was released from prison in 2019 after serving a sentence for possessing cocaine base with intent to distribute it, 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(iii), 851 (2007) (Count 1); using a firearm in furtherance of a drug trafficking crime, 18 U.S.C. § 924(c) (2007) (Count 2); and possessing a firearm as a felon, 18 U.S.C. § 922(g)(1) (2007) (Count 3). Two years after his release from prison, while he was on supervision for Counts 1 and 2, Moore violently assaulted his wife twice. Moore was charged in state court with two counts of aggravated domestic battery causing great bodily harm, 720 ILCS § 5/12-3.3(a); two counts of aggravated domestic battery with strangulation, *id.* § 5/12-3.3(a-5); and three counts of domestic battery, *id.* § 5/12-3.2(a)(2). Soon after, Moore's probation officer petitioned the district court to revoke Moore's supervised release for committing a state crime, failing to provide a monthly report to his probation officer, changing his residence without notifying his probation officer, and failing to notify his probation officer that he was questioned by police.

At a hearing on the petition, Moore pleaded guilty to the violations and admitted to the factual basis underlying each of them. The district court determined that the reimprisonment range for his violations was 30 to 37 months, and Moore did not object to that calculation. Moore requested a 30-month sentence with no additional term of supervision, arguing in mitigation that he had not violated his supervised release for two years; that he had reintegrated well into society by working two jobs, getting married, and taking care of his grandchildren; and that his son passed away shortly before the assaults.

But the district court, highlighting Moore's criminal history, the violent nature of the domestic assaults, and that Moore had credibly threatened to kill his wife, determined that an above-range sentence was necessary to protect the public and deter Moore from future crime. The court imposed the statutory maximum terms of five years' reimprisonment on Count 1 and on Count 2 to run concurrently, and five years' supervised release on Count 1. (The maximum term of supervised release was life.)

In her motion to withdraw, counsel informs us that Moore does not want to challenge the revocation of his supervision, and thus appropriately does not address whether Moore's admissions to the violations were knowing and voluntary. *See United States v. Wheeler*, 814 F.3d 856, 857 (7th Cir. 2016).

Counsel first considers whether Moore could argue that the district court's sentence was the result of a procedural error, but appropriately concludes that such a challenge would be frivolous. Moore did not object to the procedure in the district court, so we would review it for plain error. *See id.* The district court correctly determined that Moore's reimprisonment range was 30 to 37 months under Section 7B1.4(a)(2) of the Sentencing Guidelines—Moore's aggravated domestic battery charges were Grade A violations, *see* U.S.S.G. § 7B1.1(a)(1)(A)(i); *United States v. Dowthard*, 948 F.3d 814, 816, 819 (7th Cir. 2020) (Illinois aggravated domestic battery is a felony with force as an element); his criminal history category was III, *see* U.S.S.G. § 7B1.4 cmt. n.1; and he was on supervised release for possessing cocaine base and using a firearm in furtherance of drug trafficking, which are class A felonies, *see* 18 U.S.C. § 3559(a). The court also correctly stated the statutory maximum reimprisonment sentence of five years on Counts 1 and 2. *See* 18 U.S.C. § 3583(e)(3), (h). Finally, Moore had the opportunity to present mitigating arguments. *See United States v. Yankey*, 56 F.4th 554, 557–58 (7th Cir. 2023).

Counsel next correctly concludes that any challenge to the reasonableness of Moore's sentence would be frivolous. We would review the reasonableness of Moore's sentence under a "highly deferential" standard, overturning it only if the sentence was "plainly unreasonable." *United States v. Childs*, 39 F.4th 941, 944–45 (7th Cir. 2022). This is so even though Moore received an above-range sentence, because the Sentencing Commission issued only policy statements, rather than formal Guidelines, to govern revocation sentences, indicating the district court has "more than usual flexibility" in deciding such sentences. *See id.* at 945–46. Here, the court considered the serious nature of Moore's violations; the correct reimprisonment range under the Guidelines; the statutory maximum; and the sentencing factors under 18 U.S.C. § 3553(a), including Moore's criminal history, the need to protect his wife and the public, and the need for deterrence. This was more than enough to show that his revocation sentence was not plainly unreasonable. *Childs*, 39 F.4th at 946.

Finally, counsel correctly observes that a direct appeal would not be the appropriate place to challenge the effectiveness of Moore's counsel in the revocation proceedings. *Massaro v. United States*, 538 U.S. 500, 504–05 (2003).

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