NONPRECEDENTIAL DISPOSITION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 July 1, 2024
Decided July 2, 2024

Before

DIANE S. SYKES, *Chief Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 23-1269

UNITED STATES OF AMERICA, *Plaintiff-Appellee*,	Appeal from the United States District Court for the Central District of Illinois.
v.	No. 16-cr-20047-002
MICHAEL LEE DANIELS, *Defendant-Appellant*.	Sara Darrow, *Chief Judge*.

O R D E R

Michael Daniels pleaded guilty to conspiring to distribute 50 grams or more of methamphetamine, 21 U.S.C. §§ 846, 841(a)(1), (b)(1)(A)(viii), and possessing with intent to distribute 5 grams or more of methamphetamine, *id*. § 841(a)(1), (b)(1)(B)(viii). Daniels was originally sentenced to 292 months on both counts, with the sentences to run concurrently, and he received concurrent supervised-release terms of 10 years and 8 years. After filing a successful motion under 28 U.S.C. § 2255, Daniels was resentenced to the statutory minimum of 180 months in prison and the same supervised-release terms as before. Daniels appeals from that sentence, but his appointed counsel asserts that the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738, 744 (1967). Counsel's brief explains the nature of the case and raises potential issues

that we would expect an appeal like this to involve. Because the analysis appears thorough, and Daniels has not responded to the 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), and conclude that the appeal is frivolous.

First, counsel states in her submissions that she discussed with Daniels the risks and benefits of challenging his guilty plea and indicates that Daniels wishes to contest only his sentence. Thus, counsel rightly avoids raising potential arguments about whether his plea and conviction were valid. *United States v. Konczak*, 683 F.3d 348, 349 (7th Cir. 2012); *United States v. Knox*, 287 F.3d 667, 671 (7th Cir. 2002).

Counsel next properly concludes that Daniels cannot raise a nonfrivolous challenge to the length of his sentence. First, she observes that it was not imposed in violation of the law (it is below the statutory maximum) or the result of an incorrect application of the Sentencing Guidelines (Daniels received the range that he requested). *See* 18 U.S.C. § 3742. In any case, counsel adds, any error in calculating the range would be subject to a harmless-error analysis. *See United States v. Shelton*, 905 F.3d 1026, 1031 (7th Cir. 2018). And because Daniels received the statutory minimum sentence, any error in the guidelines calculation is necessarily harmless. *United States v. Melvin*, 948 F.3d 848, 854 (7th Cir. 2020). Counsel identifies no other arguable procedural errors.

Counsel also considers arguing that the sentence was substantively unreasonable but rightly concludes that any such challenge would be frivolous. To begin, the court imposed a below-guidelines sentence, and so we would presume it to be reasonable. *See United States v. Wehrle*, 985 F.3d 549, 557 (7th Cir. 2021). Nothing in the record rebuts that presumption. The court adequately justified the sentence under the § 3553(a) factors by emphasizing that the seriousness of the offense (the quantity of drugs and consequences of methamphetamine in the community) was outweighed by Daniels's mitigating characteristics ("a smart guy, very capable") and his dedication to rehabilitating himself (through education and training programs). Further, as stated above, Daniels received the statutory minimum sentence, and so he could not plausibly contest the government's decision, at the resentencing, to decline to move for a below-minimum sentence. We review that exercise of prosecutorial discretion by asking whether it was not rationally related to a legitimate government end or was based on an unconstitutional motive. *United States v. Miller*, 458 F.3d 603, 605 (7th Cir. 2006). But the government explained that its new sentencing recommendation provided Daniels with the same sentencing benefits as before. The decision to withhold the motion was,

therefore, rational and within the government's discretion. *See, e.g.*, *United States v. Senn*, 102 F.3d 327, 332–33 (7th Cir. 1996).

Finally, counsel rightly concludes that Daniels cannot plausibly challenge his supervised-release terms or conditions. As counsel explains, the court adequately justified the term and conditions when it considered the § 3553(a) factors for the entire sentence. *See United States v. Armour*, 804 F.3d 859, 867–68 (7th Cir. 2015). In any event, Daniels did not preserve any challenge to his supervised release. At his resentencing, Daniels did not object to the term of supervised release, and he waived reading of the conditions after counsel represented that they had reviewed them together. Because Daniels had notice of the supervised-release parameters and said nothing when given a meaningful opportunity to object, he could not now raise on appeal a plausible challenge to this part of his sentence. *See United States v. Canfield*, 2 F.4th 622, 627 (7th Cir. 2021).

Thus, we GRANT counsel's motion to withdraw and DISMISS the appeal.