

NONPRECEDENTIAL DISPOSITION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. 23-2784

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ISAAC MILLSAPP,
Defendant-Appellant.

Appeal from the United States District
Court for the Northern District of
Illinois, Eastern Division.

No. 1:20-CR-00930(1)

John J. Tharp, Jr.,
Judge.

ORDER

Isaac Millsapp appeals his convictions and sentence for obstructing justice, 18 U.S.C. § 1519, and attempting enticement of a minor to engage in sexual activity, 18 U.S.C. § 2422(b). 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 addresses the issues that an appeal like this would be expected to involve. Because the analysis appears thorough, we limit our review to the subjects that counsel raises, *United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014), as well as the issues Millsapp raises in response to counsel's motion, *see* CIR. R. 51(b).

On December 8, 2020, a woman contacted law enforcement after discovering that her 13-year-old daughter had been receiving inappropriate and sexually explicit communications on her Facebook account from someone whose Facebook username was “Keef Washington.” The messages dated back to September. “Washington” repeatedly asked the daughter—whose Facebook account bore the username “Certified Dasia”—to meet him in person, and he invited her to move into his apartment. On December 10, an undercover agent took over Dasia’s account, posed as the minor, and continued to exchange messages with “Washington.” Over the next ten days, “Washington” continued to send sexual messages and tried to persuade “Dasia” to leave her family to live with him. “Washington” and the agent posing as Dasia agreed to meet in an alley on December 21.

At the agreed-upon time and location, Millsapp arrived in his car. Law enforcement, suspecting Millsapp to be the source of the “Keef Washington” account, surrounded his car, and a two-hour standoff ensued. During the standoff, Millsapp destroyed a cell phone. He eventually was arrested and later charged with attempting to entice a minor to engage in sexual activity and obstruction of justice.

Millsapp pleaded not guilty and proceeded to trial. At trial, the prosecutor and a law enforcement agent read aloud the Facebook messages sent to Dasia, and the government presented evidence identifying Millsapp as the person behind the “Washington” account—i.e., IP (internet protocol) addresses, incriminating photos, and testimony identifying his voice in audio messages. The government also submitted evidence that Millsapp had destroyed a cell phone during the standoff before his arrest. The jury found Millsapp guilty on both counts.

Millsapp then moved for a new trial on the attempt conviction. *See* FED. R. CRIM. P. 33. First, he argued that the evidence at trial was insufficient for a jury to find that he was the person who used the “Washington” account to send inappropriate and sexually explicit messages. Second, he asserted that the admission of photographs of handcuffs and a small room in his apartment constructively amended the indictment by suggesting—prejudicially—that he was charged with attempted kidnapping.

The district court denied Millsapp’s motion, concluding that “overwhelming” evidence—IP addresses, the images linked to his residence, the identifying information in the communications, and his appearance at the meet-up place—tied him to the “Washington” account. The court also rejected the constructive-amendment argument, explaining that the admitted evidence was probative: The handcuffs were “intricately related to the exact crime charged,” and the photograph of the small room suggested

that Millsapp had prepared a place to house the girl and coerce her to engage in sexual activity.

At sentencing, the district court adopted the presentence report's calculation of the advisory imprisonment range under the Sentencing Guidelines: 151 to 188 months in prison. In doing so, the court overruled Millsapp's objections to a two-level increase to the offense level for misrepresenting his identity, U.S.S.G. § 2G1.3(b)(2)(A), and a two-level increase for obstruction of justice, *id.* §§ 3D1.2(c), 3C1.1. The court then imposed concurrent 180-month sentences on each count.

In his *Anders* brief, counsel first considers whether Millsapp could challenge the denial of the motion for new trial and correctly concludes he could not. When reviewing the denial of a Rule 33 motion, we evaluate whether the verdict is contrary to the weight of evidence and draw all inferences in favor of the jury verdict. *United States v. York*, 48 F.4th 494, 499 (7th Cir. 2022), *cert denied*, 143 S. Ct. 1772 (2023). Here, a rational jury could find that Millsapp knowingly used interstate commerce and attempted to entice a minor to engage in sexual activity by taking a substantial step towards engaging in prohibited sexual activity. *Id.*; 18 U.S.C. § 2422(b). The jury heard the content of the Facebook messages that "Washington" sent Dasia—descriptions of sexual acts that he planned to perform with Dasia, acknowledgments of her young age, threats he made to her, and overtures to persuade her to meet him. And the government presented ample evidence to identify Millsapp as the individual behind the "Washington" account: IP addresses, incriminating photos, testimony identifying Millsapp's voice in audio messages, and Millsapp's arrival at the meet-up location. This evidence was sufficient for a reasonable jury to find that Millsapp attempted to entice Dasia to engage in sexual activity. *See York*, 48 F.4th at 500–01; *see also United States v. Berg*, 640 F.3d 239, 250 (7th Cir. 2011) (agreeing to meet minor at specific time and place was substantial step toward attempted enticement).

Millsapp counters that his trial lawyer failed to prepare a defense, review discovery with him, and raise or address evidentiary issues at trial. But these arguments amount to an ineffective-assistance claim, which is best saved for collateral review, where an evidentiary foundation can be developed. *See Massaro v. United States*, 538 U.S. 500, 504 (2003); *United States v. Knox*, 287 F.3d 667, 671 (7th Cir. 2002).

Next, counsel rightly concludes that Millsapp cannot plausibly challenge his sentence on procedural grounds. The court correctly calculated the imprisonment range under the Guidelines, based on a total offense level of 34 and a criminal history category of I. U.S.S.G. § 5A. Central to the court's assessment was that the base offense

level corresponding to the statute of conviction was 28, *id.* § 2G1.3(a)(3); increased by two because Millsapp misrepresented his identity, *id.* § 2G1.3(b)(2)(A), and increased by two more because he used a computer service, *id.* § 2G1.3(b)(3)(A). The court then added two more levels based on the obstruction-of-justice conviction, which was a specific-offense characteristic. *Id.* §§ 3D1.2(c), 3C1.1.

Counsel relatedly asks whether Millsapp might challenge the court's decision to overrule his objections to the two-level increases for misrepresenting his identity and obstructing justice. We agree with counsel that any challenge to these rulings would be frivolous. The court's finding that Millsapp misrepresented his identity was supported by sufficient evidence at trial: Millsapp concealed his true name by using the "Keef Washington" account and lied in numerous messages about his age. *See United States v. Holt*, 510 F.3d 1007, 1010–11 (9th Cir. 2007) (§ 2G1.3(b)(2)(A) applies when defendant misidentifies his age and name). And to avoid "double counting" the offense, the court properly treated Millsapp's obstruction-of-justice conviction as a specific-offense characteristic instead of a separate count. U.S.S.G. § 3D1.2, cmt. n.5; *United States v. Maggi*, 44 F.3d 478, 481–82 (7th Cir. 1995); *United States v. Fries*, 781 F.3d 1137, 1153–54 (9th Cir. 2015).

Finally, counsel is correct that Millsapp cannot make a nonfrivolous argument that his sentence is substantively unreasonable. We presume that his 180-month sentence is reasonable because it is within the Guidelines range of 151 to 188 months. *See United States v. Smith*, 721 F.3d 904, 906 (7th Cir. 2013). And nothing in the record rebuts that presumption. The court also appropriately considered the sentencing factors under 18 U.S.C. § 3553(a), explaining that the seriousness of his conduct (engaging in a "sustained campaign" with "threats and violent imagery" to attempt to persuade a minor to participate in sexual acts) and the need to protect the public outweighed his lack of criminal history and his positive personal accomplishments (relatively consistent employment and educational history).

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