

**NONPRECEDENTIAL DISPOSITION**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**

Argued April 15, 2024  
Decided September 10, 2024

**Before**

THOMAS L. KIRSCH II, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 23-2191

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

*v.*

CAMERON MOORE,  
*Defendant-Appellant.*

Appeal from the United States District  
Court for the Northern District of  
Indiana, South Bend Division.

No. 3:23-CR-00002

Jon E. DeGuilio,  
*Judge.*

**ORDER**

Throughout 2022, Cameron Moore sold methamphetamine and paid a neighbor to receive it through the mail on his behalf. Authorities caught on, and undercover investigators executed a controlled buy from Moore and intercepted packages addressed to his neighbor. The government charged Moore with a single count of possession with intent to distribute 50 grams or more of methamphetamine, 21 U.S.C. § 841(a)(1), (b)(1)(A), to which Moore pleaded guilty. He was ultimately sentenced to 151 months' imprisonment.

Moore asserts on appeal that the district court procedurally erred by misreading the sentencing table before imposing his sentence. Finding no error, we affirm.

### **Background**

On June 8, 2023, the district court held Moore's sentencing hearing. The district court judge began by determining Moore's Sentencing Guidelines range, which is calculated by looking to both the offense level and the defendant's criminal history category. With an offense level of 35 (accounting for Moore's acceptance of responsibility) and criminal history category of IV, both parties agreed that Moore's resulting advisory Guidelines range was 235–293 months' imprisonment.

The government sought a sentence at the low end of the Guidelines range—235 months' imprisonment—while Moore advocated for a below-Guidelines sentence of 120 months, the statutory minimum. Among other points, Moore's counsel argued that under a then-proposed amendment to the Guidelines, Moore should be placed in criminal history category III, rather than IV, because one of his prior convictions was for possession of marijuana for personal use.<sup>1</sup>

After both parties advocated for their proposed sentences, the district judge addressed factors listed in 18 U.S.C. § 3553(a). Section 3553(a) requires that courts consider certain factors to ensure the resulting sentence is sufficient but not greater than necessary. 18 U.S.C. § 3553(a). Both parties acknowledged that the district judge adequately addressed their sentencing arguments.

The district judge then stated that, based on the § 3553(a) factors considered, "Mr. Moore's request for a downward variance is well taken, although not to the extent requested." The district judge cited considerations like Moore's age, familial support, and health issues, which weighed in favor of leniency, as well as factors that weighed in favor of a longer sentence, such as the danger of methamphetamine, its impact on the community, and the "substantial" amount Moore was dealing. Based on these factors, the district judge announced that "a total punishment of 151 months [was] reasonable." Moore's sentence was to be followed by five years of supervised release.

When the district judge asked whether either party requested further explanation or had any objections to the conditions announced, both parties responded that they did

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<sup>1</sup> The amendment, which is now in force, indicates that a downward departure in criminal history category "may be warranted" when a defendant receives criminal-history points for simple possession of marijuana. *See* U.S.S.G. § 4A1.3 cmt. 3(A)(ii) (as amended November 1, 2023).

not. After conferring with counsel, Moore waived a reading of supervised release conditions as listed in the presentence report.

Now, however, Moore claims that the district judge intended to grant him a further downward variance but failed to make the adjustment by mistake. Because the record does not reflect that the district judge so intended, Moore's sentence must stand.

### Analysis

We begin by addressing the standard of review. At the sentencing hearing, the district court judge first correctly calculated Moore's advisory Guidelines range, considered § 3553(a) mitigating factors, applied a reduction, and finally informed the parties of the 151-month sentence that he intended to impose. He next asked whether "either party ha[s] any objection to or request[s] any additional explanation for the sentence" he proposed. Defense counsel and the government both replied, "[n]o, Your Honor." After confirming that there were no objections, the district judge stated, "[w]ith that, then, I order that the sentence stated and not objected to is hereby imposed."

Normally, such a failure to preserve an argument for appeal by failing to object would trigger plain error review. Indeed, the government contends plain error applies. Yet Moore urges that our review is *de novo* because any alleged error arose from "the district court's ruling itself," that is, the explanation of the sentencing decision, which a party should but need not object to. *United States v. Wood*, 31 F.4th 593, 597–99 (7th Cir. 2022) ("A district court's explanation of its sentencing decision, regardless of whether it precedes or follows the announcement of the sentence itself, is a ruling to which an exception" — a complaint about a judicial choice — "is not required."); *see also United States v. Miller*, 900 F.3d 509, 513 (7th Cir. 2018); Fed. R. Crim. P. 51(a) ("Exceptions to rulings or orders of the court are unnecessary" to preserve a basis for appeal.).

However, "a district court can announce a tentative decision or view and invite objections" similar to what the district court did here, and then "[a] failure to object in those circumstances can amount to waiver." *United States v. Holman*, 840 F.3d 347, 353 (7th Cir. 2016) (citation omitted). In this case, we need not resolve the dispute over the appropriate standard of review because even under a more generous standard, Moore's arguments, addressed below, fall short. *See United States v. Goodwin*, 717 F.3d 511, 523 (7th Cir. 2013).

Moore contends the district judge "seemingly misread" the sentencing table, and thus sentenced Moore based on "inaccurate information," a procedural error requiring

remand.<sup>2</sup> *See Miller*, 900 F.3d at 513. According to Moore, the district judge “presumably meant” to sentence him as if he were in criminal history category III, since that was what the pending Guidelines amendment suggested. This would put the Guidelines range at 135–168 months.

But there is no indication that the district judge meant to do that. Instead, the judge considered the pending Guidelines amendment along with the other § 3553(a) mitigating and aggravating factors. This is reflected in the Statement of Reasons, which classifies the proposed amendment among the other factors relevant to Moore’s “history and characteristics” pursuant to § 3553(a)(1).

Nothing in the record suggests that the district judge “misread” the sentencing table itself. Although the judge discussed the potential amendment, he never pledged to adopt its reasoning completely, nor was he obligated to. *See United States v. Hayden*, 775 F.3d 847, 850 (7th Cir. 2014). And, the judge imposed a downward variance, which comes from the district court’s discretion under § 3553(a), not an amended Guidelines range. *See, for example, United States v. Griffith*, 913 F.3d 683, 688 (7th Cir. 2019) (sentencing judge has discretion to impose non-Guidelines sentence that in his judgment is “more consistent with the statutory sentencing factors set out in section 3553(a)”). From our review, the sentencing hearing transcript is devoid of any inaccurate information that would warrant remand. *See Miller*, 900 F.3d at 513–14.

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<sup>2</sup> Remand may also be appropriate if a sentence is ambiguous. *See, for example, United States v. Cephus*, 684 F.3d 703, 709–10 (7th Cir. 2012). Moore suggests in passing that this court could remand “for clarification” should we find the record “hopelessly ambiguous.” We find no ambiguity. In any event, this argument is waived, given that Moore raises it for the first time in his reply brief. *See, for example, United States v. Miles*, 244 F. App’x 31, 33–34 (7th Cir. 2007) (arguments not developed in opening brief are waived) (citation omitted). Further, Moore does not challenge the substantive reasonableness of his 151-month sentence, and we therefore do not address it.

In short, the district court gave Moore some credit for the proposed amendment, considered other mitigating factors, and imposed a below-guidelines sentence. This was well within the district court's discretion. *See Hayden*, 775 F.3d at 850 ("Although a sentencing judge may grant a variance from the guidelines range as a way of recognizing the likely effect of a pending amendment to the guidelines, the judge is not required to do so."). Moore was sentenced according to accurate information and we see no procedural error.

AFFIRMED