

NONPRECEDENTIAL DISPOSITION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 October 1, 2024

Decided October 15, 2024

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

NANCY L. MALDONADO, *Circuit Judge*

No. 24-1453

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

TIMOTHY HERMAN,
Defendant-Appellant.

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

No. 18-CR-10032-001

Michael M. Mihm,
Judge.

ORDER

Timothy Herman, who was convicted of fraud, appeals the denial of his proposal to solicit funds for a business start-up during his supervised release. The district court declined to approve Herman's proposal based on a condition of his supervised release that bars him from handling other people's money without court approval. The district court was rightly concerned that Herman's proposed activity, which mirrored his offense activity, would encourage recidivism. On appeal, Herman argues that his conditions of release permit him to solicit funds without court approval and that, even if his conditions of release forbid it, the district court abused its discretion when it

denied Herman permission to do so. Because the court did not abuse its discretion in denying Herman's request, we affirm.

In 2012 and 2013, Timothy Herman owned several businesses in financial distress and began to defraud people out of their money to make ends meet. Herman partnered with a company that he misled into believing his businesses were successful. The joint business attracted a client, and Herman stole almost \$300,000 from the client's payments to the business. He also defrauded a woman into loaning him roughly \$600,000 on the promise that he could provide her with an 8% return. He instead used it for personal expenses.

In 2018, Herman was found guilty of mail fraud, 18 U.S.C. § 1341, wire fraud, 18 U.S.C. § 1343, interstate transportation of stolen property, 18 U.S.C. § 2314, and making a false statement, 18 U.S.C. § 10001. The district court imposed 78 months' imprisonment, five years of supervised release, and over \$500,000 in restitution. Herman sought collateral relief under 28 U.S.C. § 2255 but was unsuccessful.

About six months before starting his supervised release, Herman moved to change the conditions of release. He explained that he wanted to start a waste-management company and hoped both to solicit start-up capital from felons and to employ them. To this end, he asked to modify his conditions of release, which he said forbade him from associating with felons. Though his conditions of release never included such a prohibition, the government still opposed the motion. The government pointed out that he described a plan to solicit and control investments. And that plan contravened a condition the court had imposed forbidding him from "obtain[ing] employment at any place where you will be involved in the management or handling of cash, credit, or any other financial instruments, without prior approval of the Court...."

The court held a hearing on the motion and declined to approve the plan. Herman argued that the conditions of release did not forbid his proposal, which contemplated only that he would *solicit* funds. Herman explained that before he *accepted* any money, he would again ask the court for approval, just as his condition of release required. In response, the judge noted the similarity between the conduct Herman was asking him to approve and Herman's offense, and worried that Herman might once again defraud a new group of investors. The judge also remarked that "the Court should [not] be in that business," referring to its continued oversight of how Herman managed other people's funds. The judge concluded that Herman would need to wait until after his supervision ended for "this type of business activity."

On appeal, Herman first briefly contends that the district court misinterpreted the release condition that bars him from “the management or handling” of money by ruling that it covered Herman’s proposal. We review contentions of legal misinterpretation de novo. *United States v. Shaffers*, 22 F.4th 655, 664 (7th Cir. 2022). According to Herman, this condition does not bar him from soliciting funds because solicitation is separate from managing and handling funds. But his distinction is unpersuasive: In the context of his proposed self-employed business, he hopes to solicit investments in order to handle the funds to capitalize his start up. Herman insists that the time lag between soliciting funds and managing them means that the condition need not apply to the former. But because Herman proposed soliciting funds for the sole purpose of managing them for his proposed business venture, the district court properly concluded that the prohibition on “handling” other people’s money included a ban on soliciting funds with the aim of managing them.

Legal interpretation to the side, Herman’s next argument is that the district court wrongly denied his motion under the standards of 18 U.S.C. § 3583(e)(2). That provision requires that district courts consider certain § 3553(a) sentencing factors when deciding whether to modify a condition of supervised release. But the court never modified Herman’s conditions. True, the district court scheduled a hearing to discuss Herman’s motion to modify a condition of his supervised release that he believed blocked him from associating with felons. But at the hearing the parties agreed that Herman was not subject to a condition that barred him from associating with felons. The argument then moved to whether the court should apply to Herman’s proposed solicitation scheme the *existing* condition of supervised release that required Herman to seek court approval before handling other people’s money. Because the court did not change any existing condition, it had no need to consider the § 3553(a) factors when it applied a current condition to his proposal and rejected it.

When we view the district court’s decision as applying a current condition of release to Herman’s proposal, we see no problem. A decision declining to approve an activity for which a defendant must receive court approval while on supervised release is fact-intensive and involves managerial issues best suited to the sentencing judge. We review such decisions for abuse of discretion. *See United States v. Coney*, 76 F.4th 602, 607–08 (7th Cir. 2023) (abuse of discretion is the standard for reviewing a ruling on a motion for a new trial because the inquiry is fact-intensive, managerial, and best resolved by the district judge). And none occurred here. The district court reasonably justified its decision by highlighting the similarities between the proposed scheme and Herman’s offense conduct and its ongoing concerns about the risk of recidivism.

But even if we view this appeal as a challenge to the denial of a motion to modify the conditions of supervised release, Herman cannot prevail. We review a ruling denying a motion to modify a condition of supervised release for abuse of discretion. *United States v. Evans*, 727 F.3d 730, 732 (7th Cir. 2013). Section 3583(e) requires district courts to consider certain § 3553(a) sentencing factors when deciding whether to modify conditions of supervised release. We will approve a ruling so long as it (1) reasonably relates to the offense and the defendant; (2) reasonably relates to deterrence, protecting the public, and providing needed correctional training; (3) involves no greater deprivation of liberty necessary to achieve these goals; and (4) is consistent with any pertinent statements by the Sentencing Commission. *United States v. Sines*, 303 F.3d 793, 800 (7th Cir. 2002).

The district court's ruling adequately covered these grounds. To begin, Herman concedes that the court considered the first two factors. On the last two factors, Herman insists that the court failed to consider: (1) whether the condition involved a greater than necessary deprivation of Herman's liberty interest in running a business; or (2) statements by the Sentencing Commission. But, regarding the first factor, it is enough for the district court to determine that the requested modification would be detrimental to rehabilitation. *See id.* at 801. The district court did so: It reasonably pointed out that Herman's proposal required too much court involvement to prevent him from recidivating. And as Herman and the government agree, the Sentencing Commission has made no policy statement pertaining to this kind of condition of release. Thus, the court had nothing to consider regarding this factor.

AFFIRMED