

NONPRECEDENTIAL DISPOSITION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 October 15, 2024

Decided October 17, 2024

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

NANCY L. MALDONADO, *Circuit Judge*

No. 23-3149

UNITED STATES OF AMERICA

Plaintiff-Appellee,

v.

TYESHA L. CLARK,

Defendant-Appellant.

Appeal from the United States
District Court for the Southern
District of Indiana, Indianapolis
Division.

No. 1:22CR00104-001

Jane Magnus-Stinson,
Judge.

ORDER

Tyesha Clark pleaded guilty to two charges stemming from her purchase of a firearm for her minor son. The district court sentenced her to 21 months' imprisonment. She appeals, but her appointed counsel asserts that the appeal is frivolous and moves to withdraw. *Anders v. California*, 386 U.S. 738 (1967). In her brief, counsel explains the nature of the case and addresses issues that an appeal of this kind would typically involve. Because counsel's analysis appears thorough, and Clark did not respond to the motion, CIR. R. 51(b), we limit our review to the subjects that counsel discusses, *United*

States v. Bey, 748 F.3d 774, 776 (7th Cir. 2014). We grant the motion and dismiss the appeal.

In March 2021, Clark bought a tan Glock 19X pistol for her sixteen-year-old son, Tremayne Hobson. In completing the paperwork for her purchase, she affirmed falsely that she was the “actual transferee/buyer” of the gun. About two weeks later, Hobson and two others met with a man to trade a tan Glock 19X; in the process, the man was shot and killed in front of his family. The murder investigation uncovered photographs of Hobson with the gun (which was never recovered), as well as many text messages between Clark and Hobson about the model and cost of the firearm he wanted and whether he wanted ammunition. In the messages, Clark mentioned Hobson’s history of violence (“you rob people and shoot at people”) and his trading of “street guns.” After her arrest, Clark admitted to buying the gun for Hobson. She also acknowledged that he was in a gang and had been involved in shootings.

Based on these events, Clark pleaded guilty, without a plea agreement, to making a false statement to a licensed firearms dealer, 18 U.S.C. § 922(a)(6), and transferring a firearm to a juvenile having reasonable cause to believe he would use the firearm in the commission of a crime of violence, *id.* § 922(x)(1). At the combined change-of-plea and sentencing hearing, the district court conducted a colloquy with Clark before finding that she was competent to enter an informed plea, that she understood the nature of the charges and the consequences of the plea, that her plea was knowing and voluntary, and that an independent factual basis supported the plea. The court accepted Clark’s plea, adjudged her guilty, and proceeded to sentencing.

Before the hearing, the U.S. Probation Office had prepared a presentence investigation report (PSR) that assigned a base offense level of 12 for the grouped offenses under § 2K2.1(a)(7) of the Sentencing Guidelines. It added six levels because Clark knew or had reason to believe that the firearm transferred to her son would be used or possessed in connection with another felony offense. *Id.* § 2K2.1(b)(6)(B). And the PSR subtracted three levels because Clark timely accepted responsibility. *Id.* § 3E1.1(a)–(b). Thus, her total offense level was 15, which produced a sentencing range of 18 to 24 months when combined with her criminal history category of I.

Clark had previously objected to the PSR’s recommendation of the six-level increase under § 2K2.1(b)(6)(B), but at the hearing, she withdrew the objection, and the district court adopted the PSR in full. The court next heard from one of Hobson’s victims and from Clark. The parties then offered their views on a suitable sentence:

Clark requested probation based on her lack of criminal history, while the government requested 24 months' incarceration because Clark had specific knowledge of her son's criminal activities and because she had disposed of the gun after the shooting.

The district court then discussed the sentencing factors under 18 U.S.C. § 3553(a). It observed that Clark had put a firearm in the hands of a juvenile who she knew committed violent felonies, and as a result a man was murdered in front of his family, including a small child. On the other hand, the court considered Clark's difficult upbringing and her dedication to her children despite the irresponsible decision to buy Hobson a gun. When the court observed that a mid-range sentence seemed appropriate, Clark objected that this would not reflect "the ample mitigation." The court noted the objection but imposed for each conviction a within-guidelines sentence of 21 months' imprisonment and 2 years' supervised release, to be served concurrently.

In her *Anders* brief, counsel tells us that she advised Clark about the risks and benefits of challenging her guilty plea, and Clark confirmed that she wishes to do so because, among other reasons, she believes her text messages with her son were obtained unconstitutionally. Counsel therefore properly discusses potential challenges to the validity of the plea. *United States v. Larry*, 104 F.4th 1020, 1022 (7th Cir. 2024).

We agree with counsel that any challenge to the plea would be frivolous. Because Clark did not move in the district court to withdraw her guilty plea, our review would be for plain error. *United States v. Davenport*, 719 F.3d 616, 618 (7th Cir. 2013). The court ascertained that Clark was competent to enter a plea; she was entering it voluntarily; she understood the nature of the charges, the possible penalties, the rights she would waive by pleading guilty, and the role of the Sentencing Guidelines; and the plea was supported by an adequate factual basis (facts that Clark admitted). FED. R. CRIM. P. 11(b); *United States v. Konczak*, 683 F.3d 348, 349 (7th Cir. 2012). Thus, the district court substantially complied with Rule 11(b) of the Federal Rules of Criminal Procedure, and Clark could not demonstrate plain error. *Davenport*, 719 F.3d at 618. And with the plea intact, she cannot raise a nonfrivolous argument that evidence against her was illegally obtained. *United States v. Turner*, 55 F.4th 1135, 1139 (7th Cir. 2022) (citations omitted) ("[a] guilty plea 'waives all nonjurisdictional defects'").

Counsel next considers whether Clark could raise a nonfrivolous challenge to her sentence. First, she concludes that there are no procedural errors to argue. The sentence does not exceed the statutory maximum of 10 years applicable to each count. 18 U.S.C. § 924(a)(2), (a)(6)(B)(ii). And Clark withdrew (and therefore waived, *United States v.*

Boyle, 28 F.4th 798, 802 (7th Cir. 2022)) the only objection she had to the guidelines calculations. (Regardless, the record supports the application of the offense-level increase under § 2K2.1(b)(6)(B): Messages show that Clark knew about her son’s ongoing violent criminal conduct.) Our review of any other argument would be for plain error, *United States v. Castaneda*, 77 F.4th 611, 614 (7th Cir. 2023), but counsel rightly concludes that the court complied with the procedural requirements of sentencing, *Gall v. United States*, 552 U.S. 38, 53 (2007).

Likewise, it would be futile to argue the district court abused its discretion by imposing a substantively unreasonable sentence. Clark received a within-guidelines sentence, so on appeal, we presume that it is not unreasonably high. *United States v. Major*, 33 F.4th 370, 384 (7th Cir. 2022). Nothing in the record could rebut the presumption here. The court explained its rationale for the sentence with reference to multiple § 3553(a) factors, and it considered but was not persuaded by Clark’s arguments for a probationary sentence. *Id.* at 384–85.

Finally, counsel correctly concludes that any challenge based on ineffective assistance of counsel would be frivolous to raise on direct appeal, before an evidentiary foundation could be developed on collateral review. *Massaro v. United States*, 538 U.S. 500, 504–05 (2003); *United States v. Stokes*, 726 F.3d 880, 897–98 (7th Cir. 2013).

Therefore, we GRANT counsel’s motion to withdraw and DISMISS the appeal.