

NONPRECEDENTIAL DISPOSITION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 30, 2024

Decided November 1, 2024

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 24-1673

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

AARON MOORE,
Defendant-Appellant.

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

No. 1:23-CR-00339(1)

Matthew F. Kennelly,
Judge.

ORDER

Aaron Moore pleaded guilty to conspiring to distribute a substance containing heroin. *See* 21 U.S.C. §§ 841(a)(1), 846. The district court sentenced him to a below-guidelines sentence of 108 months in prison and three years' supervised release. Moore filed a notice of appeal, but his counsel asserts that the appeal is frivolous and moves to withdraw under *Anders v. California*, 386 U.S. 738, 744 (1967). Counsel's brief explains the nature of the case and addresses issues that an appeal of this kind might be expected to involve. Because counsel's analysis appears thorough, and Moore did not respond 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).

Moore's conviction arose from his attempt to sell heroin while he was detained at the Cook County Jail. Moore negotiated sales with a confidential informant and then told coconspirators to sell the informant about 140 grams of heroin over four months. After the government charged Moore in 2021 with several counts of possessing and distributing heroin, he pleaded guilty to one count of conspiracy to distribute heroin, *see* §§ 841(a)(1), 846, in exchange for the government dropping the remaining charges.

Sentencing came next. Moore's guidelines range was 151 to 188 months, based partly on his status as a career offender and partly as the organizer of the conspiracy. *See* U.S.S.G. §§ 4B1.1(b)(3), 3B1.1(c). Moore argued that the career-offender adjustment rendered the guidelines sentence too high for the relatively minor amount (140 grams) of heroin involved. He proposed an 84-month prison term. He based his proposal on the range that would apply without the adjustments for career offender or organizer, the limited control he had over his coconspirators while he was in jail, the potential sentencing disparities with them, and his difficult youth. The government countered that the nature of the offense and Moore's long criminal history (including convictions for drug sales, resisting arrest, burglary, and robbery) justified a guidelines sentence. Even so, it recommended a sentence at the bottom of that range—151 months.

The court struck a middle line. It noted that, even though Moore was a career offender and had a leading role in the offense, the low end of the range was too high because the operation was small, and Moore's difficult upbringing mitigated the crime. But the court added, committing the offense while in jail weighed against mitigation. Balancing these factors, the court sentenced Moore to 108 months in prison and three years' supervised release, well below the bottom end of the guidelines range.

In her brief, counsel first tells us that she advised Moore about the risks and benefits of challenging his guilty plea, and that Moore wishes to challenge only his sentence. Counsel therefore properly withholds from discussing whether the plea was 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 considers, and correctly concludes, that any procedural challenge to Moore's sentence would be frivolous. The 108-month prison term does not exceed the 240-month statutory maximum, *see* § 841(b)(1)(C), and the court correctly calculated the guidelines range. First, it properly applied a career-offender offense level. *See* U.S.S.G. § 4B1.1(b)(3). Moore was over 18 when he offended and had two prior convictions that

qualified for the adjustment: one for aggravated robbery in 2021, *see United States v. Carr*, 107 F.4th 636, 646 (7th Cir. 2024) (crime of violence under § 4B1.2(a)(2)), and one for manufacturing and delivering cocaine in 2009, *see United States v. Ruth*, 966 F.3d 642, 654 (7th Cir. 2020) (controlled-substance offense under § 4B1.2(b)(1)). The court rightly calculated an adjusted offense level of 29 (32 for the career-offender adjustment minus 3 for acceptance of responsibility) and criminal history category of VI based on his career-offender adjustment, yielding a guidelines range of 151 to 188 months in prison.

Further, the court addressed Moore's arguments in mitigation. In addition to agreeing with Moore that the career-offender guideline was too high, the district court addressed the three other arguments Moore advanced. First, it responded to Moore's contention that his placement in jail limited his control over his coconspirators by noting that the "main factor" driving his sentence was not his leadership (or career-offender status), but his commission of the offense while in jail. Second, it addressed potential sentencing disparities with his coconspirators by explaining that "just punishment," a sentencing consideration under 18 U.S.C. § 3553(a)(2), incorporated Moore's own criminal history. And third, the court observed Moore's "horrendous" upbringing—which included a largely absentee father and a drug-addicted mother. But it noted that it must balance this history against his "very significant" record of convictions for drug sales, resisting arrest, burglary, and armed robbery.

Counsel also considers, and appropriately rejects, any argument challenging the substantive reasonableness of the sentence. Moore received a below-guidelines sentence of 108 months, and a sentence below the guidelines range is "presumed reasonable against a defendant's challenge that it is too high." *United States v. Bender*, 95 F.4th 507, 512–13 (7th Cir. 2024) (citation omitted). Nothing in the record could rebut that presumption because the district court reasonably balanced the statutory sentencing factors. *See id.* at 513; 18 U.S.C. § 3553(a). As mentioned above, the court recounted Moore's difficult upbringing but also reasonably weighed against it his lengthy criminal history and his commission of the offense while detained for another crime.

Finally, counsel correctly concludes that Moore could not raise any non-frivolous argument regarding the remaining parts of his sentence. The three-year term of supervised release was within the statutorily permitted range, *see* § 841(b)(1)(C), and was supported by the court's § 3553(a) analysis, *see United States v. Tounisi*, 900 F.3d 982, 989 (7th Cir. 2018). Moore also waived a reading of the conditions and thus waived any appellate challenge. *See United States v. Anderson*, 948 F.3d 910, 910–11 (7th Cir. 2020). Further, the \$100 special assessment was statutorily required. *See* 18 U.S.C. § 3013.

Counsel's motion to withdraw is GRANTED, and the appeal is DISMISSED.