NONPRECEDENTIAL DISPOSITION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 February 13, 2025
Decided February 14, 2025

Before

FRANK H. EASTERBROOK, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 24-2148

UNITED STATES OF AMERICA, *Plaintiff-Appellee*,	Appeal from the United States District Court for the Central District of Illinois.
v.	No. 20-CR-40069-001
JOSEPH A. WILCHER, *Defendant-Appellant*.	James E. Shadid, *Judge*.

O R D E R

Joseph Wilcher was convicted of attempted enticement of a minor and travel with intent to engage in illicit sexual activity, and on appeal we vacated his sentence. *United States v. Wilcher*, 91 F.4th 864, 875 (7th Cir. 2024). The district court resentenced him and he appeals again, but his appointed attorney asserts that the appeal is frivolous and moves to withdraw under *Anders v. California*, 386 U.S. 738 (1967). We notified Wilcher of counsel's motion, and he did not respond. *See* CIR. R. 51(b). Counsel submits a brief that explains the nature of the case and addresses the issues that a case of this kind might be expected to involve; because the analysis in the brief appears to be

thorough, we limit our review to the subjects that counsel discusses. *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

Wilcher drove across state lines to have sex with someone he thought was a fifteen-year-old girl but was really a federal agent. After a jury trial, Wilcher was convicted of attempted enticement of a minor, 18 U.S.C. § 2422(b), and travel with intent to engage in illicit sexual activity, 18 U.S.C. § 2423(b). Wilcher was initially sentenced to 120 months' imprisonment with a ten-year term of supervised release. He appealed, and we vacated the sentence and ordered a full resentencing because the district court had relied solely on the seriousness of the offense when it imposed supervised release and did not properly consider the mitigation arguments. *Wilcher*, 91 F.4th at 872, 875.

The United States Probation Office prepared a revised presentence investigation report (PSR) before the resentencing hearing. In the PSR, the two counts of conviction were grouped together because they involved the same victim and constituted part of a common scheme or plan. *See* U.S.S.G. § 3D1.2(b). Because the counts were grouped, the more serious conviction, enticement, determined Wilcher's total offense level. *See id.* § 3D1.3(a). Wilcher's base offense level was 28, *see id.* § 2G1.3(a)(3); 18 U.S.C. § 2422(b), and the probation officer added two levels because Wilcher used a computer in committing the offense, U.S.S.G. § 2G1.3(b)(3), for a total offense level of 30. Wilcher had a criminal history category of I based on a criminal history score of zero because he received no criminal history points for his only prior conviction, possession of marijuana. *See* U.S.S.G. § 4A1.2(e); Ch. 5, Pt. A. Because the enticement offense carries a ten-year mandatory minimum, *see* 18 U.S.C. § 2422(b), the applicable guidelines range was 120 to 121 months' imprisonment, and the sentence would run concurrently with the sentence for traveling with intent to engage in illicit sexual activity, *see id.* Ch. 5, Pt. A; § 5G1.2(c). The PSR recommended a five-year term of supervised release for each count, to run concurrently. 18 U.S.C. § 3583(k); § 3624(e).

At the resentencing hearing, Wilcher first objected to a proposed condition of release that banned him from consuming any alcohol. The district court agreed to modify the condition to ban consumption only in excess of the legal limit.

Next, without objection from either side, the court adopted the guidelines range as calculated in the PSR. The court then heard arguments from both parties about the appropriate sentence. The government requested that the court impose a 120-month prison sentence followed by a ten-year term of supervised release because of the seriousness of the offense, the graphic nature of the conversations Wilcher had with a

person whom he believed was a minor, the need to protect the public and deter Wilcher, and the need for Wilcher to engage in mental health and sex-offender treatment. Wilcher requested that the court impose a 120-month term of imprisonment and only a five-year term of supervised release because Wilcher did not have a lengthy criminal history; supervised release has little to do with general deterrence; five years was enough time to assess whether he was sufficiently rehabilitated; and he had been employed, taken classes, and had no disciplinary infractions since his incarceration. Wilcher declined to give a statement to the court.

The district court then imposed concurrent sentences of 120 months' imprisonment for both convictions and concurrent ten-year terms of supervised release. It explained that 120 months' imprisonment was the mandatory minimum and was sufficient but not greater than necessary. The court separately justified the ten years of supervised release under the factors in 18 U.S.C. § 3553(a): deterring Wilcher and others, addressing Wilcher's mental-health and substance-use problems, aiding him in rehabilitation, and preventing him from recidivating.

In the *Anders* brief, counsel properly examines only potential issues arising from the resentencing proceedings. Wilcher waived any arguments he could have raised, but did not, in his first appeal, including challenges to his conviction. *See United States v. Dearborn*, 873 F.3d 570, 573 (7th Cir. 2017).

First, counsel addresses potential procedural errors. Counsel considers whether the district court correctly calculated the guidelines ranges of 120 to 121 months' imprisonment and five years to life of supervised release. Wilcher waived any challenge to his guidelines range, however, because he affirmatively agreed to the calculations the district court set forth at his hearing. *United States v. Fuentes*, 858 F.3d 1119, 1121 (7th Cir. 2017). Even if he had only forfeited the challenge, we would review for plain error, and here we see none. The PSR correctly grouped the counts, added the two-level special offense characteristic, calculated the criminal history category, and adjusted the range to start at the mandatory minimum for enticement. Therefore, Wilcher cannot raise any non-frivolous arguments about the guidelines calculation, and counsel does not identify any other possible procedural error.

Counsel also correctly concludes that it would be frivolous to challenge the substantive reasonableness of Wilcher's within-guidelines sentence. Such a sentence is presumptively reasonable on appeal, and we will affirm it if the court provides an "adequate statement of reasons." *United States v. Major*, 33 F.4th 370, 384–85 (7th Cir.

2022) (citation omitted). Here, the court explained the sentence with reference to several factors under § 3553(a): the seriousness of attempted enticement of a minor (mitigated somewhat by the fact that there was not a real victim who was traumatized), the need to promote respect for the law, the need to afford adequate deterrence, the need to protect the public from further crime, and the need to provide Wilcher with education, training, medical care, and other treatment. And under 18 U.S.C. § 2422(b), the court could not have imposed less prison time, in any event.

Wilcher's ten-year term of supervised release is also within the statutory and guidelines ranges and would be presumed reasonable on appeal. *See United States v. Lickers*, 928 F.3d 609, 621 (7th Cir. 2019). And the district court gave reasons for the term of supervised release separately from the grounds for the prison sentence. *Wilcher*, 91 F.4th at 872. The court did not impose a term of supervised release based solely on the seriousness of the crime. *See id.*; *see* 18 U.S.C. § 3583(c). It referred instead to the need to deter Wilcher from recidivating while providing treatment for his mental-health and substance-use problems. And the court addressed Wilcher's mitigation arguments—his lack of a criminal history and the likelihood that any rehabilitation would occur within five years—and reasonably determined that they did not warrant a shorter term of supervised release. *Wilcher*, 91 F.4th at 874–75; *see also United States v. Jones*, 798 F.3d 613, 618 (7th Cir. 2015). Counsel is therefore correct to conclude that challenging the duration of supervised release would be frivolous.

Nor could Wilcher raise any nonfrivolous arguments about the conditions of his supervised release: Wilcher confirmed at the resentencing hearing that he had read the proposed conditions and discussed them with his counsel, and he objected to only the one about alcohol consumption, which the court modified. Wilcher twice confirmed that this was his only objection to the proposed conditions, and he therefore waived any other challenge. *See United States v. Flores*, 929 F.3d 443, 449–50 (7th Cir. 2019).

Finally, we note that the Supreme Court has granted certiorari to decide whether, under 18 U.S.C. § 3583(c), a district court can rely on the factors in § 3553(a)(2)(A) when imposing a sentence for violating the conditions of supervised release. *See United States v. Estreras*, 88 F.4th 1163 (6th Cir. 2023), *cert. granted*, 220 L.Ed.2d 169 (U.S. Oct. 21, 2024) (No. 23-7483). That issue relates closely to the one presented in Wilcher's appeal of his initial sentence, when he successfully challenged the original imposition of his term of supervised release because the district court relied only on § 3553(a)(2)(A) to justify it. Even if the Supreme Court rejects our interpretation of § 3583(c), however, our assessment that this appeal is frivolous would not change. This is a new sentence, and

the issue is not arguable here because of the permissible reasons the district court gave for imposing additional supervised release upon revocation.

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