

NONPRECEDENTIAL DISPOSITION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 June 4, 2025

Decided June 11, 2025

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 24-2394

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

SHERMAN M. THREETS,
Defendant-Appellant.

Appeal from the United States District
Court for the Eastern District of
Wisconsin.

No. 22-CR-216

William C. Griesbach,
Judge.

ORDER

Sherman Threets appeals his 180-month sentence for leading a conspiracy to possess with intent to distribute drugs. *See* 21 U.S.C. §§ 846; 841(a)(1), (b)(1)(A), (b)(1)(B). At issue here is whether the district court and the parties modified a plea agreement at the change-of-plea hearing to include a lower sentencing range based on state revocation sentences Threets was serving for the same conduct. Because the district court did not modify the agreement and sentenced Threets within the express terms of the agreement, we affirm.

Soon after serving a six-year prison term for a drug conspiracy conviction, Threets returned to selling drugs. From February to April 2022, Threets led a four-person conspiracy to sell heroin and methamphetamine in Oshkosh, Wisconsin. He later was indicted on several counts of drug crimes. At the time, Threets was on state supervision for two Wisconsin sentences. But because of the conduct underlying the new charges, his state supervision was revoked.

The United States Probation Office prepared a presentence investigation report that calculated a guidelines range of 262 to 327 months' imprisonment (based on a total offense level of 34 and a criminal history category of VI).

In early 2024, Threets sent a letter to the court asking to be transferred from the Dodge County, Wisconsin jail (where he was serving time for his state revocation sentences), to the nearby state correctional facility in Fox Lake, Wisconsin, so that he could access a full law library. Threets's counsel informed him, however, that any transfer would compromise the double credit he was accumulating at the county jail under a federal writ for time served on the state and federal sentences. But Threets said that he wanted to be transferred to Fox Lake to access better facilities, so the court granted his request and ordered his transfer under a federal detainer.

A few months later, Threets signed a plea agreement under Federal Rule of Criminal Procedure 11(c)(1)(C), agreeing to a prison term of 120 to 180 months for conspiring to distribute and possessing with intent to distribute controlled substances. 21 U.S.C. §§ 846; 841(a)(1), (b)(1)(A), (b)(1)(B). The parties agreed that the remaining charges would be dismissed. In the agreement, Threets acknowledged that his decision to plead guilty was not induced by any "threats, promises, representations, or other inducements ... other than those set forth in [the] agreement."

The change-of-plea hearing that followed presents the dispute in this appeal. At the hearing, where the court accepted Threets's guilty plea and the plea agreement, the question arose whether Threets's new federal sentence should run concurrently with his state revocation sentences. Defense counsel informed the court that he intended to argue at the sentencing hearing that the sentences should be concurrent:

THE COURT: ... [I]s this sentence to be concurrent [or] consecutive to that, or is that up in the air? Is the sentence to be reduced for time spent? Have you discussed those things?

[DEFENSE COUNSEL]: We have discussed it. As a matter of fact, it was a topic we just brought up today. My understanding is that we would be arguing that, and I feel that the law would be in our favor on that, but that's a determination that the Court will be making at the time of sentencing.

THE COURT: Okay.

[DEFENSE COUNSEL]: There are also various ways we can do that. If it's unexpired at that time, [the sentences can be] concurrent. If it is expired by the time of sentencing, there can be a way in which the sentence is fashioned such that this is taken into consideration, but we will get to that. That is our understanding. We feel it is related, and it should be concurrent.

THE COURT: [I]s this a point of argument, or is there agreement on this?

[GOVERNMENT COUNSEL]: There isn't agreement on paper, but I don't think there will be an argument at sentencing.

THE COURT: That the sentence I impose should be concurrent?

[GOVERNMENT COUNSEL]: Yes.

[DEFENSE COUNSEL]: Yes.

THE COURT: Should that require a reduction—I mean, is it to be fully concurrent with whatever the revocation was so I reduce whatever time I impose by what he's already served because it doesn't sound like he would get credit for that.

[DEFENSE COUNSEL]: We would be asking that.

THE COURT: That I reduce. So what was his revocation term?

[DEFENSE COUNSEL]: Excuse me?

THE COURT: What was his term?

[DEFENSE COUNSEL]: Twenty-seven months.

THE COURT: Twenty-seven months. So really this then goes down to a significant—you know 120 minus 27 what is that, 93 months to whatever 180 minus 27 [is]. Those are the ranges then

At the end of the hearing, the court told Threets: “[B]ecause of the kind of plea agreement you’ve entered into with the [g]overnment, your sentence has to be between ten years, 120 months, and 15 years, 180 months. And it can be reduced from that to account for the sentence that ... you’ve been serving on the revocation to the extent the revocation is due to the same conduct.”

About two months later a sentencing hearing was conducted. Near the outset, the court alluded to a possible sentencing range—remarking that it was “required by the agreement to impose a sentence that’s between 120 months ... and 180 months.” The government argued for a 180-month sentence while Threets argued for a 120-month sentence, reduced by the 27 months he served for the state revocation sentences.

The court sided with the government and sentenced Threets to 180 months. The court explained that Threets sold large amounts of “addictive and destructive” drugs, had multiple convictions for selling drugs that did not deter him from leading a conspiracy to sell drugs, was still serving a sentence when he resumed drug dealing, and—in exchange for drugs—tried to get someone else to take “take the heat” for him. But the court declined to grant Threets credit for the state sentences. “He’s not deserving of credit for the State sentences,” the court said. “Those were for different crimes.” The court added that it was “imposing the sentence under the terms of the plea agreement [it was] required to impose or within the range that [it was] required to impose. What the Bureau of Prisons does with credit is up to the Bureau of Prisons.” Threets objected.

On appeal, Threets argues that the district court breached the plea agreement by not giving him the benefit of the agreement he says was modified at the change-of-plea hearing. He highlights the court’s statement that the sentencing range was “120 minus 27, what is that, 93 months to whatever 180 minus 27.” Threets contends he was entitled to a concurrent sentence or reduction in his sentence because the conduct underlying his state revocation sentences was relevant conduct for his new federal sentence. *See* U.S.S.G. § 5G1.3. In his view, the highest sentence he could receive under the Rule 11(c)(1)(C) agreement was 153 months (i.e., 180 minus 27 months).

Under Rule 11(c)(1)(C), the parties may agree to a specific sentence that binds the court once it accepts the plea agreement. *United States v. Filzen*, 991 F.3d 785, 788 (7th Cir. 2021). The court may reject the plea agreement, but to do so it must follow the procedures in Rule 11(c)(5). *Id.* Where there is no dispute about the relevant facts, this court reviews de novo the interpretation of a plea agreement and whether it has been breached. *United States v. Lewis*, 842 F.3d 467, 474 (7th Cir. 2016).

The statements at the change-of-plea hearing did not modify the terms of the parties' plea agreement. Plea agreements are interpreted according to general principles of contract law, *United States v. Colbert*, 54 F.4th 521, 527 (7th Cir. 2022), and Threets's agreement does not even mention concurrent sentences or a sentence reduction based on his state revocation sentences. Nor, for that matter, does Threets point to any extrinsic evidence to call into question the 120- to 180-month sentencing range set forth in the plea agreement. The transcripts of the change-of-plea and sentencing hearings confirm the parties' and the court's understanding that the court could—but was not required to—reduce his sentence by 27 months. Threets's counsel seemed to acknowledge as much when he began the change-of-plea hearing by saying “we *would* be arguing [for a concurrent sentence]” and that it was “a determination that the Court *will be making* at the time of sentencing.” (emphasis added) And while the government agreed that the district court should impose concurrent sentences, the court—significantly, for purposes of this appeal—did not. At the end of the change-of-plea hearing, the court suggested that a reduction was a possibility but not a certainty: “[B]ecause of the kind of plea agreement you’ve entered into with the [g]overnment, your sentence has to be between ten years, 120 months, and 15 years, 180 months. And it *can* be reduced from that to account for the sentence that—you’ve been serving on the revocation *to the extent the revocation is due to the same conduct.*” (emphasis added) The court then asked the parties whether this was a “correct statement of where we are,” and the parties concurred. At no point did the court tell Threets that his sentence would be reduced.

The district court acted well within its discretion to refuse to reduce Threets's sentence or treat his sentences as concurrent. True, a district court has the discretion to impose a concurrent or consecutive sentence for a defendant “who is already subject to an undischarged term of imprisonment.” 18 U.S.C. § 3584(a). But by the time of sentencing, Threets already had served the entirety of his state revocation sentences, and therefore was ineligible for a concurrent sentence, *see United States v. Cruz*, 595 F.3d 744, 746–47 (7th Cir. 2010). And the court could not sentence Threets below the 120-month statutory minimum. *Id.* Although the court could have given Threets a 27-month

downward departure, it was not required to do so. The court reasoned that Threats's conduct underlying the state revocation sentences was not relevant conduct for his federal sentence, *see* U.S.S.G. § 5G1.3, but even if it were, the court had the discretion not to impose a concurrent sentence, *see United States v. Orozco-Sanchez*, 814 F.3d 844, 850 (7th Cir. 2016), or reduce the term of imprisonment based on a discharged sentence, *see* U.S.S.G. § 5G1.3 cmt. 4(E), 5.

AFFIRMED.