NONPRECEDENTIAL DISPOSITION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 July 9, 2025
Decided July 9, 2025

Before

THOMAS L. KIRSCH II, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 24-1380

UNITED STATES OF AMERICA, *Plaintiff-Appellee*,	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
v.	No. 1:21-CR-00277(8)
DAJUAN GEE, *Defendant-Appellant*.	John F. Kness, *Judge*.

O R D E R

DaJuan Gee pleaded guilty to wire fraud and aggravated identity theft. The district court sentenced him to 54 months in prison and 3 years of supervised release. Gee appeals, but his appointed lawyer asserts that the appeal is frivolous and moves to withdraw. *Anders v. California*, 386 U.S. 738, 744 (1967). Counsel's brief explains the nature of the case and addresses the issues that a case of this kind might be expected to involve. We notified Gee of counsel's motion, and he did not respond. *See* CIR. R. 51(b).

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

Two people hacked into a retail company's computers and stole payment card data belonging to customers. They sold the stolen data to Gee and others, collecting nearly $4 million in Bitcoin.

In April 2021, a grand jury indicted Gee and 21 other purchasers for wire fraud and identity theft. 18 U.S.C. §§ 1343, 1028A(a)(1). Gee pleaded guilty to the charges. Under the written plea agreement, he admitted to purchasing data from at least 4,256 cards and to making a purchase with a counterfeit credit card.

Before sentencing, a probation officer prepared a presentence investigation report (PSR) and calculated Gee's sentencing range under the 2023 Guidelines Manual. The officer calculated a total offense level of 24, driven by a 16-level increase under U.S.S.G. § 2B1.1(b) based on a loss calculation of $2,128,000, reflecting the $500 minimum loss mandated by Application Note 3(F)(i) for each of the 4,256 cards.

With that total offense level of 24 and a criminal history category of II, the officer calculated a guidelines range of 57 to 71 months in prison and 1 to 3 years of supervised release. The conviction for aggravated identity theft carried a mandatory term of 24 months' imprisonment, to be served consecutively to the term of imprisonment for the wire fraud conviction. *See* 18 U.S.C. § 1028A(a)(1), (b)(2).

Gee objected to the PSR and argued that the Supreme Court's decision in *Kisor v. Wilkie*, 588 U.S. 558 (2019), diminished the deference owed to application notes under *Stinson v. United States*, 508 U.S. 36, 38 (1993), which held that guidelines commentary is authoritative unless plainly erroneous. Gee insisted that *Kisor* authorized deference to an agency's interpretation of a regulation only if the regulation is "genuinely ambiguous." 588 U.S. at 573. And he argued that the meaning of "loss" in § 2B1.1(b) unambiguously meant "actual loss," making deference to Application Note 3(F)(i)'s $500 minimum loss amount inappropriate. He maintained that the actual loss amount was at most $61,168 based on the information provided by the government, corresponding to only a 6-level increase. He thus argued for a guidelines range of 18 to 24 months in prison (plus the consecutive 24-month sentence for aggravated identity theft).

At the sentencing hearing, the district court overruled Gee's objection and applied the 16-level increase under Application Note 3(F)(i). The court first explained

that *Kisor* did not modify *Stinson*, and so the court had to defer to guidelines commentary unless the commentary is plainly erroneous. Even if *Kisor* modified *Stinson*, the court concluded that it would still apply the $500 per card loss amount because Gee had stolen data from thousands of credit cards, a "huge burden" and "obstacle" to calculating the loss amount per card. The court observed that each credit card represented "a financial account tied to an individual" and thought attributing $500 to each of those cards was a reasonable estimate of the loss. The court then weighed the sentencing factors under 18 U.S.C. § 3553(a) and imposed a below-guidelines total sentence of 54 months in prison—30 months for wire fraud, and a consecutive 24 months for aggravated identity theft—and 3 years of supervised release.

Counsel first informs us that she consulted with Gee and confirmed that he does not wish to challenge his guilty plea. Counsel thus properly omits discussion of potential arguments related to the guilty plea or plea colloquy. *See United States v. Larry*, 104 F.4th 1020, 1022 (7th Cir. 2024).

Counsel considers whether Gee could challenge the district court's use of Application Note 3(F)(i) to calculate the loss amount, and she correctly concludes that our case law would foreclose any such argument. In *United States v. White*, we held that *Kisor* does not modify *Stinson*, despite the existing disagreement among the circuits on this question. 97 F.4th 532, 538–39 (7th Cir. 2024). Then in *United States v. Johnson*, we rejected the argument of one of Gee's co-defendants and held that Application Note 3(F)(i), in particular, is neither inconsistent with, nor a plainly erroneous reading of, § 2B1.1 under *Stinson*. 104 F.4th 662, 666–67 (7th Cir. 2024); *see also United States v. Ponle*, 110 F.4th 958, 962–63 (7th Cir. 2024) (continuing to follow other application notes defining "loss" under *Stinson*). It would be pointless for Gee to ask us to revisit this question again.

Next, counsel rightly concludes that Gee could not dispute other aspects of the court's guidelines calculation. His total offense level was calculated by taking the base offense level of 7, *see* U.S.S.G. § 2B1.1(a)(1), and adding the 16-level increase for the loss amount, as well as two 2-level increases for involving 10 or more victims and possessing or using device-making equipment, *see id.* § 2B1.1(b)(1)(I), (2)(A)(i), (11)(A)(i). The offense level was then lowered three levels for demonstrating acceptance of responsibility, *see id.* § 3E1.1, to arrive at a total offense level of 24. Gee incurred two criminal history points, *see id.* § 4A1.1(c), establishing a criminal history category of II, yielding the final range of 57 to 71 months' imprisonment for wire fraud. The resulting 30-month sentence fell far short of the 20-year statutory maximum for that offense.

See 18 U.S.C. § 1343. And the aggravated identity theft conviction added a flat 24-month sentence that must be served consecutively to the wire-fraud sentence. *Id.* § 1028A(a)(1), (b)(2).

Finally, we agree with counsel that it would be frivolous for Gee to challenge the substantive reasonableness of his resulting 54-month total sentence. A below-guidelines prison term is presumptively reasonable, *see United States v. Oregon*, 58 F.4th 298, 302 (7th Cir. 2023), and Gee could not plausibly rebut that presumption. The district court reasonably weighed the sentencing factors under 18 U.S.C. § 3553(a) by balancing the mitigating factors (his family and employer support, difficult childhood, and remorse) with the aggravating factors (the seriousness of the offenses and the cost to society) to arrive at 30 months plus the statutorily mandated 24-month consecutive sentence. *Id.* § 3553(a)(1)–(2).

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