

NONPRECEDENTIAL DISPOSITION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 December 2, 2022

Decided December 5, 2022

Before

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 22-1615

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

BENJAMIN WILLIAM NORVILLE,
Defendant-Appellant.

Appeal from the United States District
Court for the Central District of Illinois.

No. 20-40014-001

Sara Darrow,
Chief Judge.

ORDER

Benjamin William Norville pleaded guilty to federal drug and firearm crimes and was sentenced to 240 months' imprisonment and 5 years' supervised release. Norville appeals, but his appointed counsel asserts that the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738, 744 (1967). Norville responded to the motion. *See* CIR. R. 51(b). Counsel's brief explains the nature of the case and addresses the issues that an appeal of this kind would be expected to involve. Because

counsel's analysis appears thorough, we limit our review to the subjects that he and Norville raise. *United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

Police and firefighter-paramedics responded to a call that Norville had been unconscious in a car for several hours and would not awaken. After Norville did not respond to knocks on his window, firefighter-paramedic Gary Nelson entered the car through the passenger door. Norville awoke. Nelson saw a handgun in the center console. Officer Jared Tapscott, who knew Norville to be a felon and thus prohibited from possessing a gun, arrested him. The officers then carried out a search. They found methamphetamine on Norville, and in the car they found additional methamphetamine, marijuana, and a locked safe. Tapscott later obtained a warrant to search the safe, which contained more methamphetamine.

Norville was charged with three offenses: (1) possession of methamphetamine with the intent to distribute, 21 U.S.C. § 841(a)(1), (b)(1)(A); (2) possessing a firearm as a felon, 18 U.S.C. §§ 922(g)(1), 924(a)(2); and (3) possessing a firearm in furtherance of a drug-trafficking crime. *Id.*, § 924(c)(1)(A).

Norville pleaded not guilty and later moved to suppress the drugs and guns. He argued that Nelson discovered the gun only after opening the console without a warrant. In support, he relied on a recorded phone call between Tapscott and his lieutenant, during which Tapscott reported the arrest and said that Nelson opened the console.

After an evidentiary hearing, however, the district court denied the motion. The court credited Nelson's testimony that he had entered the car to determine whether Norville needed medical attention, that the console was open, and that the gun was plainly visible in the open console. The court also credited Tapscott's testimony that his earlier statement to his lieutenant merely presumed that Nelson had opened the console; at the hearing, Tapscott clarified that he did not see Nelson open, close, or otherwise manipulate the console.

Norville later changed his plea to guilty and, with the government's consent, reserved the right to appeal the denial of the motion to suppress.

At sentencing, the district court adopted the presentence investigation report and sentenced Norville to 180 months' imprisonment for the first two offenses, 60 months consecutive for the third, and 5 years' supervised release for all three. For the first two offenses, the court calculated a guidelines range of 188 to 235 months (based on a total

offense level of 31 and criminal history category of VI), with a mandatory, consecutive 60-month sentence for the third. 18 U.S.C. § 924(c)(1)(A)(i). The court concluded a below-range sentence was sufficient given Norville's relative youth (age 29), lack of family support, drug addiction, potential for rehabilitation, and lack of prior violence, despite the dangerousness of his current offenses and the length of his criminal history.

To begin, we note that counsel does not explore potential challenges to Norville's guilty plea. He does not inform us, as we require him to, that he consulted with and advised his client about the risks and benefits of challenging the plea. *See United States v. Konczak*, 683 F.3d 348, 349 (7th Cir. 2012). But this omission does not require that we deny the *Anders* motion. The transcript of the change-of-plea colloquy shows that the magistrate judge substantially complied with the requirements of Federal Rule of Criminal Procedure 11 and ensured that Norville's plea was voluntary. *See United States v. Davenport*, 719 F.3d 616, 618 (7th Cir. 2013).

Counsel and Norville both address the denial of the suppression motion. Counsel and Norville consider challenging the court's finding that the console was open and that the handgun Nelson found was in plain view. But that challenge would be frivolous. The court credited Nelson's testimony that he saw the gun in the open console and did not open the console, and such credibility determinations "can virtually never be clear error." *United States v. Olson*, 41 F.4th 792, 802 (7th Cir. 2022) (internal quotation omitted). The court also credited Tapscott's testimony that his earlier statement was based on only an assumption that Nelson had opened the console.

Next, counsel considers challenging the substantive reasonableness of the sentence, *see Gall v. United States*, 552 U.S. 38, 51 (2007), but rightly concludes that this challenge would be frivolous. We would presume that Norville's below-guidelines sentence is reasonable. *See United States v. Dewitt*, 943 F.3d 1092, 1098 (7th Cir. 2019). And nothing in the record would rebut that presumption. The court appropriately considered the relevant § 3553(a) factors, including the nature, circumstances, and seriousness of Norville's offense (he had been running a dangerous drug distribution business "with a way to enforce the transactions" — namely, his gun); his history and characteristics (an extensive criminal history that reflected "a lack of respect for others' property"); and the need for the sentence to protect the public and ensure that he received necessary treatment for his drug addiction and mental illness.

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