

NONPRECEDENTIAL DISPOSITION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 August 3, 2023

Decided August 3, 2023

Before

DIANE P. WOOD, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 22-2079

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

SHARIFF MILLER,
Defendant-Appellant.

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

No. 1:08-CR-00629(1)

Virginia M. Kendall,
Judge.

ORDER

Shariff Miller appeals the sentence imposed upon the revocation of his supervised release, but his appointed counsel asserts that the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738, 744 (1967). We grant counsel's motion and dismiss Miller's appeal.

A defendant who appeals a revocation order does not have an unqualified constitutional right to counsel, so the *Anders* safeguards need not govern our review. *Gagnon v. Scarpelli*, 411 U.S. 778, 789–91 (1973). Even so, our practice is to apply them.

See United States v. Brown, 823 F.3d 392, 394 (7th Cir. 2016). Counsel's brief explains the nature of the case and addresses the issues that an appeal of this kind might be expected to involve, and Miller did not respond to counsel's motion. *See* CIR. R. 51(b). In fact, Miller's appointed counsel informs us that Miller no longer wishes to contest the judgment on appeal, but Miller has not provided the requisite written consent to support a motion to dismiss the appeal. *See* CIR. R. 51(f). Because counsel's analysis appears thorough, we limit our review to the subjects he discusses. *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

In 2021, after serving time in prison for convictions of possession of crack cocaine with intent to distribute, 21 U.S.C. § 841(a)(1), and possession of a firearm as a felon, 18 U.S.C. § 922(g)(1), Miller violated the conditions of his supervised release. The probation office advised the court that Miller had (1) missed a visit with the office and (2) driven under the influence. At Miller's revocation hearing in 2022, the district court concluded that Miller committed both violations. The court then adopted the government's recommendation to sentence him to four months' imprisonment, followed by three years' supervised release for both counts, to run concurrently. In its written judgment, however, the court noted that Miller had committed an additional violation: driving under the influence a second time.

Miller then brought this appeal. And he proceeded to serve out his four-month prison term. But during the ensuing term of supervised release, Miller again was arrested. The probation office petitioned to again revoke his supervision. After a hearing, the court entered a new judgment that revoked the term of supervised release and sentenced him to an eight-month prison term without further supervised release.

Counsel explores whether Miller could raise any non-frivolous challenge to the calculation of the sentence imposed at the 2022 revocation hearing. With regard to the term of supervision on the firearm count, counsel points out that the court imposed a term longer than permitted by statute. Because the firearm count was a Class C felony, the court could at most impose a new supervised release term of 32 months, *see* 18 U.S.C. § 3583(b)(2) (36 months minus the four-month prison term imposed upon revocation of supervised release, *see* 18 U.S.C. § 3583(h)). But the court improperly imposed a 36-month term. Miller, however, did not object to the supervised release term, despite being on notice that the probation officer had not accounted for the cap on post-revocation supervised release set forth in § 3583(h). Our review, therefore, would be for plain error. *United States v. Allgire*, 946 F.3d 365, 368 (7th Cir. 2019). But because Miller cannot show that any error affected his substantial rights, counsel properly

rejects challenging the 36-month term. As counsel explains, any possible prejudice from serving a 36-month rather than 32-month term was extinguished when the court revoked his supervision after Miller stipulated to violating the conditions of its terms.

Counsel also considers challenging the court's error in entering a judgment that was inconsistent with its oral sentence. Counsel notes that the written judgment listed three violations rather than just the two identified by the court at the hearing. But counsel appropriately concludes that challenging the judgment would be frivolous because Miller has not been prejudiced: the revocation of his term of supervised release makes the error irrelevant. And because the error did not prejudice Miller, the additional stigma he may feel from being sentenced to three violations instead of two cannot be plain error. *See Allgire*, 946 F.3d at 368.

Still, an unambiguous oral pronouncement like the court's controls, and the inconsistent written judgment should be amended accordingly. *United States v. Fisher*, 943 F.3d 809, 816 (7th Cir. 2019). The discrepancy in the written judgment is a clerical error, correctable at any time under Rule 36 of the Federal Rules of Criminal Procedure. *See United States v. Anobah*, 734 F.3d 733, 739 (7th Cir. 2013). We thus order the district court to amend its judgment to reflect its oral pronouncement.

Because Miller does not wish to disturb the outcome of his supervised release, counsel appropriately refrains from addressing other potential errors related to the 2022 revocation hearing. *See United States v. Caviedes-Zuniga*, 948 F.3d 854, 856 (7th Cir. 2020).

Therefore, with the modification to the judgment, we GRANT counsel's motion to withdraw and DISMISS the appeal.