

NONPRECEDENTIAL DISPOSITION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 May 26, 2023
Decided September 11, 2023

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

No. 22-2253

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JOHN G. HASLETT,
Defendant-Appellant.

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

No. 4:15-CR-40023-SMY

Staci M. Yandle,
Judge.

ORDER

John Haslett 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 (1967). We grant counsel's motion and dismiss Haslett's appeal.

Although a defendant does not have an absolute right to counsel in revocation proceedings, *see Gagnon v. Scarpelli*, 411 U.S. 778, 789–90 (1973), our practice is to follow the *Anders* framework in this context. *See, e.g., United States v. Brown*, 823 F.3d 392, 394

(7th Cir. 2016). Counsel's brief explains the nature of the case and raises potential issues that an appeal like this would be expected to involve. Because her analysis appears thorough, and Haslett has not responded to counsel's motion, *see* CIR. R. 51(b), we limit our review to the subjects that counsel discusses. *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

Haslett pleaded guilty in 2016 to conspiring to manufacture methamphetamine, 21 U.S.C. §§ 846, 841(b)(1)(C), and possessing a listed chemical for use in manufacturing a controlled substance. *Id.* § 841(c)(2). He was sentenced to 65 months' imprisonment and three years' supervised release. Haslett served his prison term but then violated numerous conditions of his release by, among other things, testing positive for drugs and possessing a firearm. The government in turn petitioned to revoke his supervised release.

At his revocation hearing, Haslett admitted to the drug charges and other violations; the government moved to dismiss the firearm-possession violation. The district court then revoked Haslett's supervised release, calculated a policy-statement imprisonment range of 12 to 18 months (based on a criminal-history category of IV and a Grade B violation—possession of methamphetamine), U.S.S.G. §§ 7B1.1(a)(2), 7B1.4(a), and sentenced Haslett in the middle—to 15 months. Additionally, the court sentenced Haslett to 24 months of supervised release for each underlying offense, to be served concurrently.

Counsel first tells us that Haslett does not wish to challenge the revocation of his supervised release, and thus she appropriately declines to explore any challenge to his admissions or the district court's decision to revoke. *See United States v. Wheeler*, 814 F.3d 856, 857 (7th Cir. 2016).

Counsel next considers whether Haslett could challenge the court's calculation of his policy-statement range, and correctly rejects such a challenge as frivolous. Because Haslett did not object to the court's calculation, we would review such a challenge for plain error. *Id.* And we see no error, let alone one that is plain. The court properly determined that Haslett's most serious admitted violation—possession of methamphetamine—would be treated as a Class 3 felony under Illinois law, *see* 720 ILCS 646/60(b)(1), corresponding to a sentencing range of two to five years in prison. *See* 730 ILCS 5/5-4.5-40(a). Because his violation constituted a state offense punishable by imprisonment exceeding one year, the court properly characterized his violation as Grade B. *See* U.S.S.G. § 7B1.1(a)(2); *United States v. Patlan*, 31 F.4th 552, 557 (7th Cir. 2022) (Illinois methamphetamine possession a Grade B violation). And the court

correctly set Haslett's criminal-history category at IV because that was his level at his original sentencing. *See* U.S.S.G. § 7B1.4(a).

Counsel then appropriately declines to argue that Haslett's 15-month prison term exceeded the statutory maximum. Because Haslett's drug charges carried a statutory maximum between 10 and 25 years, he was convicted of two Class C felonies, *see* 18 U.S.C. § 3559(a)(3); 21 U.S.C. §§ 841(b)(1)(C), (c)(2), corresponding to a 2-year statutory maximum prison term upon revocation of supervised release. *See* 18 U.S.C. § 3583(e)(3) (2015). The court's 15-month sentence fell below the statutory maximum.

Next, counsel identifies an error in the district court's imposition of an additional 24 months' supervised release: the 24-month term for Haslett's possession conviction exceeded the 21 months that the court was authorized to impose. Supervised release following revocation is limited to the maximum supervised-release term for the underlying offense, less any term of imprisonment for the revocation. 18 U.S.C. § 3583(h). Haslett should have been subjected to no more than 21 months—the difference between the 36-month maximum term he faced based on his conviction for possession of a listed chemical, *see* 21 U.S.C. § 841(c)(2); 18 U.S.C. § 3583(b)(2), minus his 15-month prison term. Haslett did not object, so we would review for plain error. *See United States v. Allgire*, 946 F.3d 365, 368 (7th Cir. 2019). And we agree with counsel that there was no plain error. Plain error exists only if the error affected Haslett's substantial rights (i.e., prejudice). *See United States v. Olano*, 507 U.S. 725, 734 (1993). But because Haslett's conviction for conspiracy to manufacture methamphetamine, § 841(b)(1)(C), allows for a maximum supervised release term of life, the 24-month term imposed for this conviction was lawful. *See* 18 U.S.C. § 3585(h). And a simple modification of the district court's possession-conviction sentence from 24 to 21 months will suffice to correct this error. We see no other substantial right that the error may have been impinged. *See Allgire*, 946 F.3d at 368.

Counsel then rightly rejects challenging the district court's reliance on dismissed conduct—Haslett's firearm possession—to increase his sentence. District courts may consider a wide range of conduct at sentencing, including dismissed offenses. *United States v. Bridgewater*, 950 F.3d 928, 938–39 (7th Cir. 2020).

Finally, we agree with counsel that any challenge to the reasonableness of Haslett's 15-month term of imprisonment would be frivolous. We presume a term within the policy-statement range like Haslett's to be reasonable. *United States v. Jones*, 774 F.3d 399, 404 (7th Cir. 2014). And nothing in the record could rebut that presumption. The district court adequately addressed the § 3553(a) factors, acknowledging Haslett's arguments in mitigation with regard to his mental health and

drug problems but concluding that his firearm possession and repeated drug violations while on supervised release showed that he posed a danger to the community and required deterrence from future criminal conduct. This explanation more than sufficed.

We therefore MODIFY the judgment by reducing the term of supervised release for Haslett's possession conviction to 21 months. With that change, we GRANT counsel's motion to withdraw and DISMISS the appeal.