NONPRECEDENTIAL DISPOSITION
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United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted October 16, 2023
Decided October 16, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 22-2309

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

GLENN BOWDEN,
Defendant-Appellant.

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

No. 1:19-CR-00924(1)

Harry D. Leinenweber,
Judge.

O R D E R

Glenn Bowden pleaded guilty to committing, and conspiring to commit, Hobbs Act robbery. *See* 18 U.S.C. § 1951(a). The district court sentenced him to 110 months in prison, 3 years of supervised release, and restitution. Bowden appeals, but his appointed attorney asserts that the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738, 744 (1967). Bowden did not respond to counsel's motion. *See* CIR. R. 51(b). Counsel's brief explains the nature of the case and discusses potential issues that an appeal of this kind would be expected to involve. Because this analysis appears thorough, we limit our review to the potential issues that counsel identifies. *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

Bowden and Marlon Jude worked together to rob three Sprint stores in the Chicago area. Each time, Bowden or Jude pointed a gun—or what looked like one—at employees or customers, restrained them with zip ties (two of three times), and took cell phones and cash belonging to the store or the people present. The men stole property worth $3,650, $44,639, and $8,273 from the first, second, and third robberies.

Law enforcement officers eventually arrested Bowden. Once in federal custody, Bowden sent letters to Sprint and the district court, claiming that he gave the manager of the third store $5,000 for her assistance in that robbery. Sprint took this false allegation seriously and investigated the manager.

A year later, on the morning trial was set to begin, Bowden filed a plea declaration in which he admitted that he was guilty of three counts of Hobbs Act robbery and one count of conspiracy. The district court accepted his plea that day.

In applying the Sentencing Guidelines, the probation officer who prepared the presentence investigation report (PSR) grouped the conspiracy count with each robbery count. The base level for each group was 20. U.S.S.G §§ 3D1.1(a); 2B3.1(a). To Groups 1 and 2, the PSR added four offense levels for use of a dangerous weapon, *id.* § 2B3.1(b)(2)(D), and two more for physically restraining a victim, *id.* § 2B.3.1(b)(4)(B). Group 2 also received a one-level increase for a loss amount exceeding $20,000. *Id.* § 2B3.1(b)(7)(B). Group 3 included an increase of five levels for brandishing a firearm, *id.* § 2B3.1(b)(2)(c), and two levels for obstruction of justice, based on the letters falsely implicating the store manager, *id.* § 3C1.1. The overall offense level was 30 after the adjustment for multiple counts. *Id.* § 3D1.1(a)(3); 3D1.4. Bowden's criminal history category of V was based on six prior convictions, including one misdemeanor and one conviction in 1995. *See id.* § 4A1.1(a).

At the sentencing hearing, the district court addressed Bowden's objections. Bowden argued against the enhancement for obstruction of justice, asserting that his letters were immaterial. The court rejected the argument, finding Bowden sent the harassing letters as an attempt to obstruct, influence, or impede an official proceeding, or to influence, delay, or prevent the store manager's testimony.

Otherwise, the court sustained Bowden's objections. The court reduced the criminal history category to IV, removing four criminal history points for the misdemeanor and the conviction that was older than fifteen years. The court also accepted Bowden's argument, and the government's stipulation, that Bowden should receive a two-level reduction for acceptance of responsibility even though he had

obstructed justice. *Id.* § 3E1.1. Bowden's new criminal history category of IV and total offense level of 28 resulted in a guidelines imprisonment range of 110–137 months and a range of 0–3 years of supervised release. *Id.* § 5D1.2.

After hearing the parties' arguments, the court discussed the factors under 18 U.S.C. § 3553(a). In mitigation, the court considered the need to avoid a disparity between Bowden's sentence and Jude's 110-month sentence, Bowden's advanced age, and the harshness of his pretrial custody during the COVID-19 pandemic. In aggravation, the court considered the violence of armed robbery. It also mentioned the need for deterrence given Bowden's frequent contact with police. The court sentenced Bowden to 110 months in prison, 3 concurrent terms of 3 years' supervised release, and it ordered restitution of $56,462, the value of the stolen electronics and cash adjusted for any property that was recovered.

In the *Anders* brief, counsel reports that after she consulted with Bowden and advised him about the risks and benefits of withdrawing his guilty plea, Bowden affirmed that he wants to challenge only his sentence. Therefore, counsel properly refrains from discussing the validity of the guilty plea. *United States v. Konczak*, 683 F.3d 348, 349 (7th Cir. 2012); *United States v. Knox*, 287 F.3d 667, 671 (7th Cir. 2002).

Counsel first considers whether the district court committed any procedural errors at sentencing, beginning with the guidelines calculations. First, counsel discusses the upward adjustments to which Bowden did not object: using a dangerous weapon, brandishing a firearm, physically restraining a victim, and causing a loss exceeding $20,000. We would review these increases for plain error. *United States v. Mikulski*, 35 F.4th 1074, 1077 (7th Cir. 2022). Each was based on uncontested information in the PSR, and so counsel can identify no possible, let alone plain, error. *See United States v. Sunmola*, 887 F.3d 830, 839 (7th Cir. 2018). We agree with this assessment.

Next, counsel discusses a potential challenge to the adjustment for obstruction of justice applied to Group 3 (which Bowden concedes had no effect on the total offense level because of the grouping rules). We would review the court's factual findings for clear error and its application of the guideline de novo. *United States v. Price*, 28 F.4th 739, 754 (7th Cir. 2022). Bowden argued that the court and the government did not take the letters seriously and that the letters did not discourage the store manager from testifying, but instead spurred her to assist the government. The court, however, found that the letters were a form of harassment of the store manager—a witness—and an attempt to influence, delay, or prevent her testimony. *See* U.S.S.G. § 3C1.1 cmt. n.4(I) (incorporating 18 U.S.C. § 1512(b), (c)(1)); *United States. v. Burgess*, 22 F.4th 680, 686–88

(7th Cir. 2022). It would be frivolous to cast this finding as clearly erroneous given Bowden's attempt to deflect guilt and the effect of the letter sent to Sprint. Further, an attempt is sufficient to support the adjustment, regardless of whether the conduct has the intended effect. *United States v. Barber*, 937 F.3d 965, 972 (7th Cir. 2019). Therefore, we agree that it would be frivolous to argue that applying the enhancement for obstruction of justice was improper.

Counsel next explains that Bowden cannot plausibly argue that he should have received more than a two-level reduction for accepting responsibility. Under U.S.S.G § 3E1.1(b), the court cannot subtract a third offense level without a motion by the government. *Hicks v. United States*, 886 F.3d 648, 651 (7th Cir. 2018). We would conclude that withholding this motion was fitting because Bowden pleaded guilty after the investment of substantial resources in trial preparation, and counsel identifies no reason to believe that the government had invidious or improper motives. *United States v. Nurek*, 578 F.3d 618, 624–25 (7th Cir. 2009).

Bowden also objected to his criminal history category, which was lowered when points for a misdemeanor and a too-old conviction were subtracted, and so counsel considers whether there was any other potential error in this calculation. Ultimately, the court determined Bowden had eight criminal history points: three points for one conviction resulting in two years' imprisonment, three points for one conviction that carried a sentence of twenty years' imprisonment, one point for a conviction with a sentence of two days' imprisonment, and one point for a conviction resulting in 24 months' probation. *See* U.S.S.G. § 4A1.1(a), (c). This placed Bowden in category IV, *id.* at § 5 pt. A, and counsel is correct that it would be frivolous to argue otherwise.

Counsel identifies no other potential procedural errors with respect to the sentence, such as relying on clearly erroneous information, overlooking mitigating arguments, or failing to apply § 3553(a) and adequately explain the chosen sentence. *See United States v. Lyons*, 733 F.3d 777, 784 (7th Cir. 2013). Based on the sentencing transcript, we would agree with this assessment.

We also agree with counsel that challenging Bowden's sentence as substantively unreasonable would be futile. Bowden's sentence is within the guidelines range and therefore would be presumed reasonable. *United States v. McDonald*, 981 F.3d 579, 581–82 (7th Cir. 2020). Rebutting the presumption would be impossible because the district court consulted and reasonably applied the § 3553(a) factors: it heavily weighted the seriousness of the offenses, which involved brandishing a gun at restrained victims, and

it also cited Bowden's history of violent crimes and the need to deter him and protect the public. *See, e.g.*, *United States v. Harris*, 51 F.4th 705, 718 (7th Cir. 2022).

Counsel also finds no possible issue regarding the amount of Bowden's mandatory restitution under 18 U.S.C. § 3664(a). The PSR contained an accounting of the losses of each victim, which was sufficient for the district court judge to fashion a restitution order absent an objection from Bowden. *See Sunmola*, 887 F.3d at 839–41. Counsel confirmed with the prosecutor that the value of recovered property was subtracted from the loss amount and can identify no other possible error. We agree with counsel that it would be frivolous to argue the district court plainly erred when setting the amount of restitution based on the undisputed facts in the PSR.

Finally, counsel considers whether Bowden could reasonably argue that the district court erred when imposing the conditions of supervised release. The court imposed only one condition, Special Condition 10, over Bowden's objection, and our review would be for abuse of discretion. *United States v. Armour*, 804 F.3d 859, 867 (7th Cir. 2015). The condition requires Bowden to pay at least 10% of his gross income toward restitution once supervised release begins. Bowden wanted the condition to "net out necessary living expenses." Counsel points to authority that Special Condition 10 accounts for Bowden's financial status by placing him on a payment schedule, under which he retains most of his income. *See United States v. Alverez*, 21 F.4th 499, 504 (7th Cir. 2021). We agree that challenging this condition would be frivolous.

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