NONPRECEDENTIAL DISPOSITION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 November 28, 2023
Decided November 29, 2023

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 22-2841

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ROBERT E. WILLIAMS,
Defendant-Appellant.

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

No. 21-CR-20064-001

Colin S. Bruce,
Judge.

O R D E R

Robert Williams pleaded guilty to possession of a firearm by a felon, *see* 18 U.S.C. § 922(g)(1), and the district court sentenced him to 102 months' imprisonment and 3 years' supervised release. Williams appeals, but his appointed lawyer contends that the appeal is frivolous and moves to withdraw under *Anders v. California*, 386 U.S. 738, 744 (1967). Counsel's brief explains the nature of the appeal and addresses issues that an appeal of this kind might be expected to involve. Williams did not respond to counsel's motion. *See* CIR. R. 51(b). Because counsel's analysis appears thorough, we focus on the subjects that she discusses. *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

Williams came to the attention of officers who suspected that he and another individual sold narcotics and lived together in a townhome. The officers obtained a search warrant, entered Williams's home, and found in his bedroom a firearm, which formed the basis of his § 922(g)(1) charge. In a common area of the home, they found three other firearms—all of which were semi-automatic and capable of accepting a large-capacity magazine—and various controlled substances and drug paraphernalia. Williams was not charged with the drugs or other firearms.

The district court sentenced Williams to 102 months' imprisonment. The court, adopting the recommendations in the presentence investigation report, calculated a total offense level of 25. Central to this calculation was the court's determination that the firearms and controlled substances found in the common area were part of Williams's relevant conduct. That determination affected his base offense level (22) because the firearms were semi-automatic and could accept large capacity magazines, *see* U.S.S.G. § 2K2.1(a)(3); required a 2-level enhancement because of the quantity of firearms, *see id.* § 2K2.1(b)(1); and justified a 4-level enhancement because Williams had the "potential of facilitating" another felony offense—drug trafficking—when he possessed the firearm, *see id.* § 2K2.1(b)(6)(B), 2K2.1 cmt. n.14. Williams also received a three-level reduction for acceptance of responsibility. When combined with a criminal-history category of VI, *see id.* § 4A1.1, his guideline range was 110 to 137 months, capped by the statutory maximum of 10 years, *see* 18 U.S.C. § 924(a)(2).[1] The district court weighed the factors under 18 U.S.C. § 3553(a) and found a downward variance justified based on Williams's difficult childhood and nonviolent criminal history.

After consulting with Williams, counsel first represents that Williams wishes to withdraw his guilty plea, *see United States v. Konczak*, 683 F.3d 348, 349 (7th Cir. 2012), so she explores whether there is a nonfrivolous basis to do so. A defendant may withdraw a guilty plea only for fair and just reasons, including legal or actual innocence or if his plea was not knowing and voluntary. FED. R. CRIM. P. 11; *United States v. Kamkarian*, 79 F.4th 889, 892 (7th Cir. 2023).[2] Williams did not move to withdraw his guilty plea in the

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[1] Congress amended § 924 in 2022, increasing the statutory maximum sentence for violations of § 922(g)(1) to 15 years. Bipartisan Safer Communities Act, Pub. L. No. 117-159, sec. 12004, 136 Stat. 1313, 1329 (2022). Williams's case predates that change.

[2] Another basis for withdrawal of a guilty plea is if a defendant received ineffective assistance of counsel. *See Kamkarian*, 79 F.4th at 892. Counsel notes Williams's contention that the assistance he received in the district court was deficient, but she

district court, so our review would be for plain error. *United States v. Schaul*, 962 F.3d 917, 921 (7th Cir. 2020).

We agree with counsel that any challenge to the validity of his plea would be frivolous. With regard to factual innocence, Williams admitted at his plea hearing to the facts underlying the government's basis for the § 922(g)(1) charge, and we presume his sworn statements to be true. *See United States v. Smith*, 989 F.3d 575, 582 (7th Cir. 2021). As for legal innocence, counsel rightly concludes that any challenge—even in the aftermath of *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022)—also would be frivolous. In *Bruen*, the Supreme Court held that the Second Amendment requires the government to prove that firearm statutes like § 922(g)(1) are "consistent with this Nation's historical tradition of firearm regulation" *Id.* at 2126. Williams did not challenge the statute's constitutionality in the district court, so our review would be for "plain, obvious, and prejudicial" error. *United States v. Brown*, 973 F.3d 667, 715 (7th Cir. 2020). But given this court's recent acknowledgment that the historical assessment on this question is unsettled and possibly indeterminate, *see generally Atkinson v. Garland*, 70 F.4th 1018 (7th Cir. 2023), any error, if there was one, would not be plain or obvious, *see United States v. Hosseini*, 679 F.3d 544, 552 (7th Cir. 2012). And as for the voluntariness of Williams's plea, our review of the plea-colloquy transcript reflects that the court fully complied with Rule 11 of the Federal Rules of Criminal Procedure.

Counsel next discusses whether Williams could raise any nonfrivolous argument to the calculation of his offense level. Counsel asks, specifically, whether the court erred by relying on relevant conduct—the firearms, controlled substances, and drug paraphernalia found in the common area—to boost his offense level and otherwise trigger several enhancements to his guidelines calculation.

We agree with counsel that Williams waived his right to challenge these findings when, at sentencing, he withdrew objections that he initially had raised to them. *See United States v. Syms*, 846 F.3d 230, 234 (7th Cir. 2017).

Counsel also correctly notes that it would be frivolous for Williams to challenge the calculation of his criminal-history category. The court properly assigned criminal-

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properly concludes that this claim would best be addressed on collateral review so that a fuller factual record can be developed. *See Massaro v. United States*, 538 U.S. 500, 504 (2003); *United States v. McClinton*, 23 F.4th 732, 737 (7th Cir. 2022).

history points to each of his prior convictions under U.S.S.G. § 4A1.1, totaling 20 points and a category of VI.

Finally, counsel correctly determines that Williams could not advance any nonfrivolous argument regarding the substantive reasonableness of his sentence. We would treat his 102-month, below-guidelines sentence as presumptively reasonable. *United States v. Gibson*, 996 F.3d 451, 468–69 (7th Cir. 2021). Counsel does not identify a reason to challenge that presumption here, and we discern none. The court adequately considered the § 3553(a) factors, emphasizing the seriousness of the offense and the need for deterrence (Williams's past experiences being incarcerated did not deter him from possessing a dangerous weapon) and Williams's personal characteristics (having a difficult childhood yet making meaningful efforts to avoid recidivating by obtaining stable employment).

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