NONPRECEDENTIAL DISPOSITION
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United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted November 28, 2023
Decided December 1, 2023

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 23-1080

UNITED STATES OF AMERICA, *Plaintiff-Appellee*, *v*. JAYKUMAR PATEL, *Defendant-Appellant*.	Appeal from the United States District Court for the Southern District of Illinois. No. 3:21-CR-30118-DWD David W. Dugan, *Judge*.

O R D E R

Jaykumar Patel participated in a fraudulent scheme in which scammers posed as law enforcement to convince elderly victims to mail cash if they wanted to recover personal information that was said to have been stolen. Patel picked up, or intended to pick up, packages containing a total of $266,300 in cash and gift cards from at least fifteen victims; he in turn delivered those packages to other coconspirators. Patel pleaded guilty to conspiracy to commit mail fraud in violation of 18 U.S.C. § 1349. The district court sentenced him to six years' imprisonment (almost two years above the high end of the guidelines range), three years' supervised release, restitution of

$206,300, and a $25,000 fine. Patel 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). Counsel's brief explains the nature of the appeal and addresses issues that an appeal of this kind might be expected to involve. Because counsel's analysis appears thorough, we limit our review to the subjects discussed in counsel's brief and Patel's response under Circuit Rule 51(b). *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

Counsel reports that after advising Patel about the risks and benefits of withdrawing his guilty plea, Patel confirmed that he wishes only to challenge his sentence. Counsel therefore 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 does consider—on Patel's behalf—a host of possible challenges to the district court's calculation of his guidelines range. First, she asks whether Patel could raise a nonfrivolous challenge to the application of a specific-offense characteristic enhancement because the offense involved at least ten victims. U.S.S.G. § 2B1.1(b)(2)(A). Patel did not object to this enhancement, so our review would be for plain error. *United States v. Mikulski*, 35 F.4th 1074, 1077 (7th Cir. 2022). Because Patel admitted in his plea declaration that he picked up or intended to pick up packages from at least fifteen victims, we agree with counsel that this challenge would be frivolous.

Counsel also considers whether Patel could plausibly argue that he should not have received an enhancement based on the vulnerability of his victims, *see* U.S.S.G. § 3A1.1(b)(1), given that he never spoke to a victim and did not know that any were vulnerable. But counsel rightly explains that such a challenge would be frivolous. The enhancement requires only that the defendant "should have known" that the victims were vulnerable. U.S.S.G. § 3A1.1(b)(1). Here, not only did Patel's counsel at sentencing concede that the provision applied, but Patel also admitted (in his plea declaration) that the scam targeted the elderly, who readily qualify as vulnerable, particularly when their financial investments and security are at risk. *United States v. Iriri*, 825 F.3d 351, 352 (7th Cir. 2016) (applying U.S.S.G. § 3A1.1(b)(1)). The district court noted that Patel should have known his victims were vulnerable because the packages he received (including one in which thousands of dollar bills were stuffed between the pages of a magazine wrapped in tinfoil) reflected he was not dealing with sophisticated parties.

Counsel next considers, but appropriately rejects, arguing that Patel should have received a downward adjustment for being a minor participant in the conspiracy, given

that he performed a role like a drug mule, merely picking up packages and earning only a small commission. *See* U.S.S.G. § 3B1.2. As counsel points out, Patel did not invoke this provision at sentencing and, regardless, the court implicitly rejected this argument when—as part of its assessment of the factors set forth under 18 U.S.C. § 3553(a)—it disbelieved Patel's suggestion that he was unaware of the nature and extent of the scheme, given the number of packages he received and their suspicious appearance, as well as his post-arrest conduct in allowing a victim to send a package containing $10,000 in cash to his home address.

Counsel also considers whether Patel could challenge the substantive reasonableness of his above-guidelines sentence. But we would uphold as reasonable a sentence that exceeds the recommended guidelines range as long as the district court sufficiently justifies its reasons consistent with the sentencing factors set forth in 18 U.S.C. § 3553(a). *See United States v. Molton*, 743 F.3d 479, 484 (7th Cir. 2014); *United States v. Faulkner*, 885 F.3d 488, 498 (7th Cir. 2018) ("The appellate court must determine whether the justification offered comports with the degree of variance from the Guidelines."). And the court here appropriately emphasized the nature and circumstances of the offense (swindling the elderly out of their life savings and conduct continuing post-arrest), Patel's personal history (betraying his supportive family and good education for easy money), and the need for deterrence (deterring fraudulent schemes against the elderly).

In his Rule 51(b) response, Patel argues that the district court should not have sentenced him above the Guidelines based on factors already accounted for in the Guidelines (*e.g.*, vulnerable victims, *see* U.S.S.G. § 3A1.1(b)(1), high loss amount, *see id.* § 2B1.1(b)(1)(G)). But a sentencing court need explain only why the sentence is appropriate under the relevant statutory criteria—here § 3553(a)—and the court did exactly that. *See United States v. Kuczora*, 910 F.3d 904, 908 (7th Cir. 2018).

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