

NONPRECEDENTIAL DISPOSITION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 October 24, 2023

Decided October 25, 2023

Before

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 23-1224

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ANGEL MONTANO,
Defendant-Appellant.

Appeal from the United States District
Court for the Southern District of
Indiana, Indianapolis Division.

No. 1:20-CR-00194-002

Tanya Walton Pratt,
Chief Judge.

ORDER

In 2020, Angel Montano participated in a series of robberies in which one victim was shot to death. Montano pleaded guilty to two robbery charges, 18 U.S.C. § 1951(a), and one charge of gun use. *See id.* § 924(c). The district court calculated a guidelines range of 292 to 365 months, with a mandatory consecutive 84-month sentence for the gun conviction. The court sentenced him above the recommended ranges, to a total of 480 months. Montano filed a notice of appeal, but his appointed counsel asserts that the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738, 744

(1967). Because counsel's analysis appears thorough, and Montano did not respond to the 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). We grant the motion and dismiss the appeal.

In his *Anders* submission, counsel informs us that Montano does not wish to challenge his guilty plea, so counsel appropriately refrains from discussing any arguments related to the plea's validity. *See United States v. Konczak*, 683 F.3d 348, 349 (7th Cir. 2012); *United States v. Knox*, 287 F.3d 667, 670–71 (7th Cir. 2012).

Counsel evaluates several possible arguments concerning Montano's sentence but rightly concludes that each would be frivolous. First, he considers whether Montano's 480-month sentence exceeds the statutory maximum term. In § 924(c)(1)(A), Congress set out a statutory minimum with no maximum, but we, like our sister circuits, have construed the statute to implicitly authorize district courts to impose a sentence up to a maximum of life imprisonment. *See United States v. Lucas*, 670 F.3d 784, 795-96 (7th Cir. 2012) (citing cases). Because Montano faced a possible life sentence, his sentence is not greater than the statutory maximum.

Counsel next asks whether Montano could challenge the district court's guidelines calculation and properly rejects such a challenge as frivolous. The court correctly calculated Montano's guidelines range at 292 to 365 months, based on a total offense level of 40 and a criminal history category of I. His offense level was largely driven by his § 924(c) conviction, and the court appropriately accepted the PSR's determination that Montano killed his victim under circumstances that constitute murder. *See* 18 U.S.C. § 1111(a); U.S.S.G. § 2A1.1(a) (assigning base offense level of 43 for first-degree murder). According to undisputed facts in the PSR, Montano fired the shots that killed the decedent as Montano was trying to rob him. Because murder is defined in part as a killing committed in the attempt to commit a robbery, *id.*, the judge did not err when determining that Montano's conduct constituted murder.

Counsel also evaluates and correctly rejects any potential challenge to the substantive reasonableness of Montano's above-guidelines sentence. We will uphold an above-guidelines sentence so long as the district court applied the factors in 18 U.S.C. § 3553(a) and adequately explained why the penalty is appropriate. *See United States v. Njos*, 68 F.4th 1060, 1064–65 (7th Cir. 2023). Here, the court appropriately evaluated the relevant § 3553 factors, especially the nature and circumstances of the offense (“brazen”

and “horrific,” killing one person and inflicting “unimaginable” pain and trauma on other vulnerable victims, several of them young).

Counsel also properly concludes that Montano could not raise any non-frivolous arguments regarding the other parts of his sentence. He waived his right to challenge the conditions of supervised release because he confirmed at the sentencing hearing that he did not object to the proposed terms. *See United States v. Flores*, 929 F.3d 443, 449 (7th Cir. 2019). In addition, the special assessment of \$100 per conviction is required by law for any person convicted of a felony. *See* 18 U.S.C. § 3013(a)(2)(A). Finally, the court found that Montano would be able to pay a \$1,000 fine (through prison earnings or otherwise), and Montano did not object to this finding when invited to do so.

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