

NONPRECEDENTIAL DISPOSITION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 January 4, 2024

Decided January 8, 2024

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 23-1256

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

MICHAEL D. KING,
Defendant-Appellant.

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

No. 3:17-cr-30052-SMY-1

Staci M. Yandle,
Judge.

ORDER

Michael King appeals the sentence he received for the revocation of his supervised release. His appointed counsel asserts that the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738, 744 (1967). A defendant does not have an unqualified constitutional right to counsel in a revocation proceeding, and so the *Anders* safeguards need not apply. *See Gagnon v. Scarpelli*, 411 U.S. 778, 790 (1973); *United States v. Brown*, 823 F.3d 392, 394 (7th Cir. 2016). Still, it is our practice to follow them. *Brown*, 823 F.3d at 394. Because counsel's analysis appears thorough, and King

did not respond 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). We grant counsel's motion and dismiss the appeal.

In 2017, King pled guilty to failing to register as a sex offender, for which he was sentenced to 24 months' imprisonment and ten years of supervised release. King began serving supervised release in November 2018. The court revoked it in July 2020 after King violated several conditions: driving an uninsured car, failing to participate in mental health treatment, failing to make restitution payments, and being unsuccessfully discharged from sex offender treatment. He was sentenced to a year of imprisonment and eight more years of supervised release.

King was released from prison in June 2021, and in April 2022 his probation officer again petitioned for the revocation of his supervised release. King allegedly had committed battery against a 16-year-old, in violation of the condition that he not commit any federal, state, or local offense. (He was charged with misdemeanor battery in Indiana state court.) The revocation petition also alleged that King failed to submit his monthly report forms, schedule mental health evaluations, complete a cognitive skills course, participate in sex offender treatment, and abide by the rules of his residential reentry center.

At the revocation hearing, King admitted all violations except the one associated with the battery; as to that charge, he simply admitted that the government had enough evidence to prove battery by a preponderance of the evidence. The court adjudicated King guilty of every charged violation, the highest of which was Grade C. King's criminal history category was III, and so the policy statements in Chapter 7 of the Sentencing Guidelines suggested 5 to 11 months' reimprisonment. U.S.S.G. § 7B1.4(a). Both King's counsel and the government recommended a sentence of time served (eight months) and no further supervised release. His counsel urged the judge to consider King's remorse for his behavior, his long history in the criminal justice system, his physical ailments, and how those ailments motivated him to abide by the law. King himself reiterated his desire to stay out of prison and start his life fresh.

The court then sentenced King to a one-year term of imprisonment. It emphasized how troubled it was by King's "defiant" attitude, deeming him a risk to the community, and particularly to minors, because of the seriousness and nature of his violations. It also decided to impose a five-year period of supervised release. The court acknowledged that King did not appear capable of adhering to the requirements of

supervised released but cited the potential danger if he were simply allowed to walk free after his sentence.

Counsel, in the *Anders* brief, first states that King does not wish to challenge the revocation of his supervised release. She therefore appropriately declines to explore any challenge to the voluntariness of the admissions or to the revocation decision. *See United States v. Wheeler*, 814 F.3d 856, 857 (7th Cir. 2016).

According to counsel, King wishes to challenge (1) the constitutionality of his original conviction for failure to register on the grounds that he was not subject to the requirements of the Sex Offender Registration and Notification Act (“the Act”); and (2) the imposition of an additional term of supervised release. Counsel considers and rejects these arguments.

First, counsel is correct to reject a challenge to the constitutionality of the Act as applied to King’s case. King believes that the Act does not apply to him because his underlying offense occurred before its passage, and therefore he never had an obligation to register and should not have been convicted under the Act for failing to do so. This is not an argument that King could raise on appeal from a revocation sentence, however. A direct appeal of his conviction or a motion under 28 U.S.C. § 2255 were the avenues for raising constitutional challenges to a criminal conviction. *See United States v. Precely*, 702 F.3d 373, 376–77 (7th Cir. 2012).

Counsel next addresses King’s argument that the court impermissibly imposed more supervised release when his lawyer, the government, and the probation officer all advised against it. Supervised release is part of the sentence, and our review of sentences imposed for violating conditions of supervised release is highly deferential; we will only reverse if it is plainly unreasonable. *See United States v. Raney*, 842 F.3d 1041, 1043 (7th Cir. 2016). A district court is not required to follow anyone else’s recommendation when it imposes a sentence – all it must do is consider the guidelines policy statements and the sentencing factors specified in 18 U.S.C. §§ 3553(a) and 3583(e). *See Raney*, 842 F.3d at 1043. That occurred here, and so, despite the contrary advice the court received, it would be frivolous to challenge the new term of supervised release.

Next, counsel examines potential arguments about the sentence and first concludes that King has no nonfrivolous challenges to its procedural correctness. King pleaded guilty to several violations of his conditions, none higher than a Grade C

violation, U.S.S.G. § 7B1.1(a)(3), and his criminal history score was III. King did not object to either determination, and the Guidelines policy statements, therefore, recommended a sentence of 5–11 months, which the court acknowledged. U.S.S.G. § 7B1.4(a). And because King’s original offense—failure to register as a sex offender—is a Grade C felony, his terms of imprisonment and supervised release are within the statutory maximums of two years and life, respectively. 18 U.S.C. § 3583(e)(3), (h), (k).

Counsel finds no other possible procedural errors at the sentencing hearing. The court confirmed that King received notice, gave him the opportunity to appear, appointed him counsel, and permitted him to make a statement with information in mitigation. *See* FED. R. CRIM. P. 32.1(b)(2).

As counsel concludes, King also lacks any nonfrivolous challenge to the substantive reasonableness of his sentence. It is above the applicable range, but judges have substantial flexibility when sentencing in the revocation context and must only give some indication that they have considered the guidelines policy statements and appropriate § 3553(a) sentencing factors. *United States v. Dawson*, 980 F.3d 1156, 1165–66 (7th Cir. 2020). Here, the court specifically noted that it was considering King’s history of being “defiant” on supervised release, the “compelling” nature of his current violations, and the danger he posed to the community, especially given his history of violence toward minors. We would not conclude that this fell short of the court’s duty to justify an above-guidelines sentence.

Finally, counsel considers and appropriately rejects any challenge to the conditions of his supervised release because he waived this argument. He told the court at sentencing that he was familiar with the proposed conditions and required no further explanation of them; moreover, he did not object to any condition when given the opportunity. When a defendant who has had the benefit of counsel and of receiving advance notice of the conditions fails to object in the district court, he waives any appellate argument against the conditions. *United States v. Flores*, 929 F.3d 443, 449 (7th Cir. 2019).

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