

NONPRECEDENTIAL DISPOSITION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 February 8, 2024

Decided February 20, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 23-1358

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

OLANIYI OJIKUTU,
Defendant-Appellant.

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

No. 1:18-CR-00818(10)

John Robert Blakey,
Judge.

ORDER

Olaniyi Ojikutu pleaded guilty to wire fraud, *see* 18 U.S.C. § 1343, and was sentenced to 88 months in prison. Ojikutu filed a notice of appeal, but his appointed lawyer asserts that the appeal is frivolous and seeks 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. Because counsel's analysis appears thorough, we limit our review to the subjects that counsel discusses, *see United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014), as well as the issues

Ojikutu raises in his response to counsel's motion, *see* Cir. R. 51(b). We grant the motion and dismiss the appeal.

For more than three years, Ojikutu and his co-defendants used a variety of internet scams to defraud victims into sending them large sums of money. In one such romance scam, Ojikutu impersonated a jeweler who needed money to purchase precious stones in Dubai; he then convinced the victim to wire him thousands of dollars. To advance these scams, Ojikutu opened 25 bank accounts under multiple names. Ojikutu and his co-defendants obtained nearly \$3.5 million in fraudulent proceeds, which they used for their own benefit, such as purchasing vehicles in the United States to be resold in Nigeria.

Ojikutu was charged with four counts of wire fraud, but when federal agents attempted to execute an arrest warrant in Chicago, he could not be located. Ojikutu, who at the time was in New Jersey, assured a federal official that he would return to Chicago the next day. Instead, he took a bus to Canada. Federal agents then issued a red notice to the International Criminal Police Organization (Interpol). When Ojikutu later was stopped for speeding in Canada, officers notified United States authorities. Ojikutu voluntarily agreed to be turned over to United States authorities.

Ojikutu later pleaded guilty to wire fraud in violation of 18 U.S.C. § 1343. The written plea agreement set forth an anticipated guideline range calculation of 63 to 78 months' imprisonment based on a criminal history category of I and an offense level of 26. Ojikutu acknowledged that these anticipated guidelines could change based on the government's further review of the facts or applicable law.

At sentencing, the government sought, and the district court adopted, an additional two-level enhancement to Ojikutu's offense level for obstruction of justice because he fled to Canada. *See* U.S.S.G. § 3C1.1. The enhancement had the effect of increasing his calculated guideline range to 78 to 98 months. Ojikutu did not object to the enhancement and revised guideline range. After considering mitigating and aggravating factors, the district court sentenced Ojikutu to 88 months' imprisonment and 3 years' supervised release, plus restitution and a mandatory special assessment.

Counsel first tells us that he consulted with Ojikutu and confirmed that Ojikutu wishes to challenge only his sentence, not his plea. Counsel therefore properly forgoes discussing whether the plea was valid. *United States v. Konczak*, 683 F.3d 348, 349 (7th Cir. 2012); *United States v. Knox*, 287 F.3d 667, 671 (7th Cir. 2002). Even so, Ojikutu equivocates in his Rule 51(b) response, stating that "if he had known about the [two-

point] enhancement for obstruction there's no change of plea." In any event, challenging the plea would be frivolous because the record shows that the court complied with Rule 11 of the Federal Rules of Criminal Procedure.

Counsel next considers whether Ojikutu could challenge the two-point enhancement to his offense level for obstructing justice when he fled to Canada after his attempted arrest. *See* U.S.S.G. § 3C1.1. But counsel correctly determines that this argument would be frivolous. Ojikutu waived any challenge to that enhancement when his counsel confirmed on the record that there were no objections to the presentence investigation report, *see United States v. Picardi*, 950 F.3d 469, 474 (7th Cir. 2020), and regardless, Ojikutu's flight to Canada impeded and made the government's investigation significantly more costly, *see United States v. Cisneros*, 846 F.3d 972, 975–76 (7th Cir. 2017).

Further, counsel considers and rightly rejects challenging the substantive reasonableness of Ojikutu's sentence. We presume that a sentence within the applicable guidelines range is reasonable. *See United States v. Cunningham*, 883 F.3d 690, 701 (7th Cir. 2018). Counsel does not identify a reason to challenge that presumption, and we discern none. Ojikutu asserts that he was sentenced more severely than four of his co-defendants—creating the kind of “unwarranted sentence disparity” that 18 U.S.C. § 3553(a) discourages. But differences in sentences that result from correct application of the guidelines are not unwarranted. *United States v. Sanchez*, 989 F.3d 523, 540 (7th Cir. 2021). Moreover, the court appropriately weighed the nature and circumstances of the offense (a financial scheme that targeted victims who were particularly vulnerable) and Ojikutu's personal characteristics (noting his lack of criminal history, remorse, and efforts at rehabilitation). *See id.* at 701–02.

Finally, to the extent that Ojikutu wishes to challenge his sentence based on ineffective assistance of counsel, such an argument is best saved for collateral review, where an evidentiary foundation can be developed. *See Massaro v. United States*, 538 U.S. 500, 503–05 (2003).

Counsel's motion to withdraw is GRANTED, and the appeal is DISMISSED.