NONPRECEDENTIAL DISPOSITION
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United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued December 13, 2023
Decided December 18, 2023

Before

DIANE P. WOOD, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 23-1375

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JAMES ANDERSON,
Defendant-Appellant.

Appeal from the United States District Court for the Western District of Wisconsin.

No. 09-cr-152-wmc-1

William M. Conley,
Judge.

O R D E R

James Anderson was convicted in 2010 of possessing child pornography. The present appeal, however, concerns not the underlying offense, but instead Anderson's difficulties in complying with the terms of his supervised release. His first term was revoked, he served more time in prison, and he then began his second term. Shortly thereafter, he violated the conditions of release and once again faced revocation. In the present appeal, he is complaining about the sentence he received in conjunction with the second revocation—a sentence that is harsher than the one recommended by the policy statements in the Sentencing Guidelines. Anderson argues that the district court failed adequately to justify this upward variance and also overlooked his principal

arguments in mitigation. Finding no reversible error in the judge's handling of his case, we affirm.

I

Anderson pleaded guilty in 2010 to possession of child pornography, see 18 U.S.C. § 2252(a)(4)(B), and was sentenced to 96 months' imprisonment and 20 years of supervised release. He served out the prison term. In 2021, Anderson had his supervised release revoked for violating certain conditions of his supervision. The district court (Judge Crabb) determined, among other things, that Anderson had lied to his probation officer and possessed unauthorized electronic devices. The court sentenced Anderson to 18 more months in prison, to be followed as before by 20 years of supervised release. After completing his new prison term, he began a second period of supervised release.

Soon after beginning his new term of supervised release, Anderson's probation officer filed another revocation petition. The probation officer alleged that Anderson had violated the conditions of his release, again by lying to his probation officer as well as by withholding information from his treatment provider about certain sexually explicit materials in his possession.

In anticipation of Anderson's revocation hearing, the parties submitted letters to the court (now acting through Judge Conley); those letters primarily addressed the question whether the images found on his hard drive were "obscene." Anderson admitted violating his supervised release but stressed, as relevant here, that he struggled with an addiction to "deviant pornography." He urged that his efforts to get treatment, his need for more treatment, and his desire to rebuild his life warranted a prison term at the low end of the guidelines' advisory range. The government responded that Anderson's violations demonstrated a need for a year-long prison term followed by additional supervision.

The court held a hearing and sentenced Anderson to another 18-month prison term, this time to be followed by a lengthier 30 years of supervised release. The court acknowledged that the prison term exceeded the calculated advisory range of three to nine months (based on a Grade C violation and criminal history category of I), but it applied an upward variance for several reasons: Anderson's repeated deception of both the probation office and his treatment provider; his possession of unapproved devices; his possession of images that depict children engaged in sexually explicit conduct; and most egregiously, his violation of the same supervised-release conditions as during his first term of supervision.

II

On appeal, Anderson raises procedural challenges to the district court's handling of his revocation proceedings. He argues that the court failed to give an adequate explanation for either the above-guidelines prison sentence or the lengthy term of supervised release. Although the court touched on some matters (the images' content, the timing of his relapse, and his prior violations of supervision), it failed (he contends) to tie any of them to the sentence the judge chose.

Because Anderson calls into question the adequacy of the court's explanation, we reproduce the judge's comments here:

> Indeed, the forensic review shows [that Anderson] began to engage in this behavior while on home confinement even before his supervised release term commenced, then continued to maintain possession of devices that he was aware contained illustrated images of child sexual exploitation during his supervised release term and had no intent to be forthcoming with the probation officer or his treatment provider until the devices were found and he was confronted.
>
> Even more egregious, the defendant was revoked during his first term of supervised release for essentially the same violations, and it's this last one that cause me to believe that a sentence below what Judge Crabb imposed, which is what the guidelines suggest and, indeed, below the mandatory sentence, is probably not appropriate here, but I haven't decided, and I am willing to hear further argument by the parties … .
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> … .
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> … The depictions that you're supporting is part of a much greater foul group of individuals who are creating it, as you probably know, some using live children to create the depictions. Certainly providing it to purveyors and to individuals like yourself, that promotes a sexual deviancy that can be incredibly damaging to children, and I don't know what else to do but hold you accountable for that by sending you back to prison, but it's a waste of time and resources if you're not going to take it seriously.

This explanation was more than adequate. We will uphold an above-guidelines sentence if the district court provides a statement of its reasons consistent with the relevant factors under 18 U.S.C. § 3553(a). *United States v. Allgire*, 946 F.3d 365, 367 (7th Cir. 2019). Here, the district court appropriately identified several factors that supported an upward variance: the nature and circumstances of the offense, which the

judge described as "disturbing" and "deeply concerning"; Anderson's history and characteristics ("Even more egregious, the defendant was revoked during his first term of supervised release for essentially the same violations."); and the obvious need for deterrence. 18 U.S.C. § 3553(a)(1), (2)(B); *id.* § 3583.

Even if these were legitimate considerations, however, Anderson accuses the judge of committing procedural error by, in effect, basing his sentence on his prior 18-month revocation sentence as if it were a "mandatory minimum." We will assume that this would have been erroneous. The problem is that nothing in the record supports such a conclusion. Judge Conley never hinted that he thought that he was bound to the revocation sentence that Judge Crabb had chosen. To the contrary, he independently justified the above-guidelines sentence (18 months, rather than something between six and nine months) based on Anderson's violation of the very same conditions that he violated during his first term of supervision. See *United States v. Armour*, 804 F.3d 859, 866–67 (7th Cir. 2015) (no procedural error for sentencing court to account for defendant's repeated violations of supervised release).

Anderson relatedly asserts that the district court did not justify its 30-year term of supervised release. But the court rightly highlighted Anderson's "poor adjustment to supervision" and need for "assistance transitioning back into the community." Regardless, a district court need not separately justify terms of imprisonment and supervision when the same explanation reasonably applies to both. *United States v. Manyfield*, 961 F.3d 993, 997 (7th Cir. 2020); *United States v. Bloch*, 825 F.3d 862, 869–70 (7th Cir. 2016). And, particularly because both the terms and the length of supervised release can be adjusted later, no one expects a district court to explain the precise number (30 years versus 29, 20 years versus 25) with scientific precision.

Last, Anderson argues that the court did not consider his principal argument in mitigation—that he has an addiction and needs treatment rather than lengthy incarceration. He characterizes his recent behavior as a relapse, familiar to addicts, and urges that therapy is helpful to him and he wishes to continue it.

True, the court did not mention addiction, but on this record the omission was justifiable. At a revocation hearing, a defendant is entitled to make a statement and present mitigating information, but district courts are not required explicitly to address every point, given the informal nature of such proceedings. *United States v. Yankey*, 56 F.4th 554, 557–58 (7th Cir. 2023); *United States v. Williams*, 887 F.3d 326, 328 (7th Cir. 2018). The court here had good reason not to mention Anderson's alleged addiction: Anderson himself never characterized his behavior using the language of addiction at the hearing, and he failed to develop the argument in his sentencing letter. An

argument that has never been developed for the sentencing judge cannot be considered a principal argument in mitigation. *United States v. Chapman*, 694 F.3d 908, 914 (7th Cir. 2012).

The district court's decisions were procedurally sound, and so we AFFIRM its revocation sentence.