NONPRECEDENTIAL DISPOSITION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 March 28, 2024
Decided March 29, 2024

Before

DIANE S. SYKES, *Chief Judge*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 23-1532

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

GEORGE L. HOWELL,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Indiana, South Bend Division.

No. 3:20CR25-001

Damon R. Leichty,
Judge.

O R D E R

George Howell pleaded guilty to making false statements in connection with a firearm purchase, 18 U.S.C. § 922(a)(6), and was sentenced to 48 months in prison. Howell 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 (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, and Howell 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.

Howell and his girlfriend, Lutty Boyce, went to a pawn shop in South Bend, Indiana. Howell, a convicted felon, pointed out a pistol for Boyce to buy, and she complied, indicating on a firearm application form that she was the buyer of the gun. A few weeks later, Boyce's daughter told police officers that Boyce purchased the weapon for Howell and that it was in the truck Howell drove to work. Police obtained a search warrant for the truck and found the pistol in the console, alongside paperwork bearing Howell's name. Though Howell denied ownership of the car and firearm, a coworker confirmed that he drove the truck and his DNA was found on the gun.

Howell pleaded guilty to making a false statement in connection with acquiring a firearm. 18 U.S.C. § 922(a)(6). The government dismissed an additional charge for unlawfully possessing a firearm as a felon. *Id.* § 922(g)(1). At sentencing, the judge calculated without objection an offense level of 17 (a base level of 20, minus three levels for accepting responsibility) and a criminal history category of VI, for a total guidelines range of 51 to 63 months' imprisonment. After considering the relevant mitigating and aggravating factors, including Howell's criminal history and the specific circumstances of this offense, the judge sentenced Howell to 48 months' imprisonment and one year's supervised release.

Counsel first reports that she consulted with Howell, and he wishes to withdraw his guilty plea. *See United States v. Konczak*, 683 F.3d 348, 349 (7th Cir. 2012). She considers whether there would be a nonfrivolous basis to do so. A defendant may withdraw a guilty plea only for fair and just reasons—for example, if he is legally or actually innocent, or if his plea was not knowing or voluntary. FED. R. CRIM. P. 11(d)(2)(B); *United States v. Kamkarian*, 79 F.4th 889, 892 (7th Cir. 2023). Howell did not move to withdraw his guilty plea in the district court, so our review would be only for plain error. *United States v. Austin*, 907 F.3d 995, 998 (7th Cir. 2018).

We agree with counsel that any challenge to the validity of the plea would be frivolous because the district judge substantially complied with Rule 11 of the Federal Rules of Criminal Procedure. *See United States v. Davenport*, 719 F.3d 616, 618 (7th Cir. 2013). During the colloquy, Howell admitted to the facts underlying the basis for the charge. And the judge ensured that Howell was satisfied with the representation he received, understood the charges against him and their possible penalties, was not induced to plead guilty by threats or force, and knew the rights he was forfeiting by pleading guilty. Because Howell's statements under oath are presumed true,

see United States v. Barr, 960 F.3d 906, 917 (7th Cir. 2020), it would be frivolous to argue that accepting the plea was plain error.

Counsel next correctly concludes that Howell could not plausibly challenge his sentence on any of the procedural grounds set forth in *Gall v. United States*, 552 U.S. 38, 49–51 (2007). A challenge to the calculation of the guidelines range would be frivolous, because the judge's calculation of Howell's offense level and criminal history category was based on undisputed facts. As required, the judge began by calculating the guidelines range and then applied the sentencing factors under 18 U.S.C. § 3553(a) and explained the sentence. *See id.*; *United States v. Jarigese*, 999 F.3d 464, 471 (7th Cir. 2021).

Counsel also correctly concludes that Howell could not raise a nonfrivolous argument that his sentence is substantively unreasonable. The judge sentenced him below the properly calculated guidelines range, and we have never found a below-guidelines range to be unreasonably high. *See United States v. Oregon*, 58 F.4th 298, 302 (7th Cir. 2023). The judge thoroughly justified the sentence under the § 3553(a) factors by addressing the nature and circumstances of the offense (possessing the firearm at his place of employment and lying to officers) and Howell's personal history and characteristics (his long and violent criminal history, close ties with his family, and physical ailments). So attempting to rebut the presumption of reasonableness would be futile.

We GRANT counsel's motion to withdraw and DISMISS the appeal.