

**NONPRECEDENTIAL DISPOSITION**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**

Argued January 30, 2024  
Decided February 27, 2024

**Before**

DIANE S. SYKES, *Chief Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 23-2182

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

*v.*

MATIAS ZARATE,  
*Defendant-Appellant.*

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

No. 20-cr-20063-001

Colin S. Bruce,  
*Judge.*

**ORDER**

While on federal supervised release, Matias Zarate used cocaine. The district judge revoked his release (for the second time) and imposed a sentence of 21 months in prison, the bottom of the recommended Sentencing Guidelines range. Because the judge adequately explained the reasons for this revocation and prison term, we affirm.

Zarate pleaded guilty to conspiring to transport persons who are unlawfully in the United States, 8 U.S.C. § 1324(a)(1)(A)(ii), (v)(I). A judge in the Southern District of Texas sentenced Zarate to 24 months in prison and 36 months of supervised release. In

2019 Zarate began this first round of supervised release, and his supervision was transferred to the Central District of Illinois.

But Zarate struggled to meet the conditions of supervision. He tested positive for cocaine and was referred to counseling; he was arrested (and later convicted in Illinois court) for misdemeanor domestic battery, leading to a modification of the terms of release to include 60 days of home confinement; and he then admitted to using more drugs and alcohol, and so agreed to 90 more days of home confinement.

Those modifications did not end Zarate's troubles. When faced with a first revocation petition, he admitted to failing to participate in substance-abuse testing and treatment, for which the judge imposed an 8-month prison term followed by 28 months of additional supervised release. *See* 18 U.S.C. § 3583(e)(3) (authorizing reimprisonment upon revocation); *id.* § 3583(h) (authorizing a new supervision term after reimprisonment).

Then during the renewed supervision, Zarate stumbled again, leading to a second revocation and reimprisonment. This petition to revoke followed Zarate's arrest for trespassing and damaging property; a related state criminal case is pending. Zarate also admitted to drinking alcohol, and he twice tested positive for cocaine.

At Zarate's second revocation hearing, he admitted to using cocaine twice, and the government dropped the other grounds for revocation. The judge then calculated the advisory reimprisonment range under the policy statements in the Sentencing Guidelines. Zarate's criminal history category was VI (his prior offenses included, among other things, robbery, kidnapping, and several burglaries). Zarate's conceded Grade B violation resulted in an advisory range of 21 to 27 months of reimprisonment subject to a 24-month statutory maximum under § 3583(e)(3).

The judge imposed a revocation sentence of 21 months in prison and no further supervision, noting Zarate's extensive criminal history and demonstrated lack of rehabilitation. Zarate had been given multiple chances to conform his conduct to the terms of supervision, to no avail. Although the judge recognized that Zarate appeared to suffer from drug and alcohol problems, he had shown little success addressing them on release. Finally, the judge understood that Zarate had already served an earlier prison sentence upon revocation and spent several months in jail awaiting this revocation hearing. Still, the judge explained, he did not see any commitment by Zarate to tackle his substance abuse; further supervision would therefore be futile.

Zarate now contends that the 21-month revocation sentence was plainly unreasonable because (1) his time already spent on supervised release exceeded his original term of three years and (2) his violation was nonviolent. Our review of a revocation sentence is highly deferential; we will uphold the new prison term unless it is plainly unreasonable. *United States v. Yankey*, 56 F.4th 554, 560 (7th Cir. 2023). When revoking supervised release, a judge must consider the Guidelines policy statements and the § 3553(a) sentencing factors made applicable to revocation by § 3583(e). *Id.* at 559. A within-range sentence is presumptively reasonable. *Id.* at 560.

Zarate cannot overcome the presumption of reasonableness. He first contends that his sentence should be lower because he had already served the 36-month period of supervised release originally imposed for conspiring to transport persons illegally into the United States. But § 3583(e)(3) and (h) authorize reimprisonment and a renewed period of supervised release after the first revocation and further reimprisonment upon the second revocation, without credit for the previous revocation sentence or previous periods of release. And Zarate identifies no authority requiring a court to credit his prior reimprisonment and supervision. *See United States v. Perry*, 743 F.3d 238, 242 (7th Cir. 2014) (declining to subtract prior prison terms following revocation from the statutory maximum for subsequent revocations). Indeed, the judge reasonably concluded that Zarate’s previous supervised release—or rather his repeated violations of the conditions—cut against further lenience. *See United States v. Clay*, 752 F.3d 1106, 1109 (7th Cir. 2014) (concluding that a within-range revocation sentence following “repeated, flagrant violations” of release conditions was reasonable).

Zarate next asserts that the revocation sentence is unreasonable because his drug use has been nonviolent. But as the judge observed, drug use breaks the law, can be dangerous, and contributed to Zarate’s difficulties with overall compliance. Zarate’s reimprisonment term of 21 months lies at the bottom of the range recommended by the policy statements. And the judge appropriately stressed Zarate’s extensive criminal history and continued noncompliance with the terms of his supervised release. This reflects ample consideration of the policy statements and § 3553(a) factors. *See Yankey*, 56 F.4th at 560 (requiring only a limited explanation of a revocation term). The nonviolent nature of Zarate’s violation does not entitle him to a below-range sentence.

AFFIRMED