NONPRECEDENTIAL DISPOSITION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 23, 2024
Decided January 24, 2024

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 23-2523

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JEWELION F. YARBROUGH,
Defendant-Appellant.

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

No. 20-CR-30091-NJR-01

Nancy J. Rosenstengel,
Chief Judge.

O R D E R

Jewelion Yarbrough pleaded guilty to three counts of distributing methamphetamine, 21 U.S.C. §§ 841(a)(1), (b)(1)(C), for which the district court sentenced him to 100 months in prison and 3 years of supervised release. Yarbrough appeals, but his appointed attorney asserts that the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738 (1967). Counsel's brief explains the nature of the case and addresses potential issues that an appeal of this kind would typically involve. Yarbrough did not respond to counsel's motion. *See* CIR. R. 51(b).

Because counsel's analysis appears thorough, we limit our review to the subjects identified in the brief. *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

Over a three-week span, Yarbrough mailed three packages containing a total of 105 grams of ice methamphetamine (at least 80% pure methamphetamine) from California to a confidential source in Illinois. In two of the packages, the ice was hidden inside a children's toy. These mailings led to the three counts of distributing methamphetamine to which Yarbrough pleaded guilty.

At the sentencing hearing, the district court adopted the guidelines recommendations in the presentence investigation report (PSR), which grouped the three charges together to yield a single guidelines range. U.S.S.G. § 3D1.2(d). Yarbrough's base offense level was 30 because he distributed at least 50 grams but less than 150 grams of ice. *See id.* § 2D1.1(c)(5). He received a three-level downward adjustment for acceptance of responsibility, *id.* § 3E1.1, resulting in a final offense level of 27. Yarbrough's criminal history category was IV based on prior convictions for various crimes including theft, assault, obstructing a police officer, and domestic violence. *Id.* § 4A1.1(b–c). Because of the age of some of his prior convictions, not all of his past offenses, such as his conviction for residential burglary (his only felony), added to his criminal history score. These guideline calculations yielded a range of 100 to 125 months' imprisonment and 3 years' supervised release (the statutory minimum for the drug charges). *Id.* § 5D1.2(c); 21 U.S.C. § 841(b)(1)(C).

Yarbrough raised two arguments for a below-guidelines sentence, but the court rejected both. He first argued that his criminal history category overstated his criminal past because his score was based mostly on misdemeanors and an ordinance violation (the assault). The court disagreed, reasoning that Yarbrough's past crimes, including the assault, were serious, and he received no criminal history points for his felony burglary charge. Second, Yarbrough argued that his base offense level was unfairly inflated because it was based on ice, yet the vast majority of methamphetamine distributed around the country also qualifies as ice. The court explained that it had never ignored the ice/methamphetamine differential in the Guidelines, and it would not do so here.

The court then weighed the factors under 18 U.S.C. § 3553(a) and concluded that a sentence within the guidelines range was appropriate. First, it considered in mitigation Yarbrough's substance-abuse problems, stemming in part from the death of his infant daughter. Then it discussed several factors that weighed in aggravation: First, his current drug crimes, serious in themselves, were made more dangerous because Yarbrough hid the methamphetamine in children's toys. Second, Yarbrough violated

his pretrial release conditions nine times, leading to the revocation of his bond. Third, the court cited the need to deter him from crimes and to respect the law (because his previous, short sentences had not done so), and the need to deter methamphetamine crimes by others given the effects of that drug on the community. The court concluded by sentencing Yarbrough to 100 months' imprisonment on each count—the bottom end of the guidelines range—to be served concurrently. It also sentenced Yarbrough to a supervised-release term of three years on the drug counts, the statutory minimum.

Counsel informs us that Yarbrough wishes to challenge only the length of his sentence and not his conviction. Counsel thus properly refrains from discussing the validity of the guilty plea. *See United States v. Konczak*, 683 F.3d 348, 349 (7th Cir. 2012); *United States v. Knox*, 287 F.3d 667, 671 (7th Cir. 2002).

Counsel first considers whether Yarbrough could plausibly argue that the district court miscalculated his base offense level of 30, but rightly concludes that he could not. Yarbrough distributed 105 grams of ice, which corresponds to a base offense level of 30. *See* U.S.S.G. § 2D1.1(c)(5). Yarbrough stipulated to this amount and withdrew any formal objection to the PSR's calculation of his base offense level. He thus waived any dispute about this point. *See United States v. Syms*, 846 F.3d 230, 234 (7th Cir. 2017).

Counsel also rightly concludes that it would be futile to challenge the calculation of Yarbrough's criminal history category. Yarbrough correctly received one point for assault, U.S.S.G. § 4A1.1(c); two points for theft, criminal trespass, and battery, *id.* § 4A1.1(b), *id.* § 4A1.2(k)(1); two points for willful obstruction of law enforcement, *id.* § 4A1.1(b); two points for grand theft, *id.*; and one point for domestic violence with injury, *id.* § 4A1.1(c). These correspond to eight points under U.S.S.G. § 4A1.1(a) and a criminal history category of IV.

Finally, counsel correctly observes that a challenge to the substantive reasonableness of Yarbrough's prison term would be frivolous. His within-guidelines prison term of 100 months is "presumed reasonable against a defendant's challenge that it is too high." *United States v. De La Torre*, 940 F.3d 938, 953 (7th Cir. 2019) (internal citation omitted). This presumption can be rebutted only by showing that the sentence does not reasonably comport with the § 3553(a) factors. *Id.* But Yarbrough could not plausibly make that contention. Counsel's brief (and our own review of the court's consideration of the § 3553(a) factors) shows that the court reasonably balanced the seriousness of the offense and the need for specific and general deterrence against Yarbrough's mitigating arguments.

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